149 U.S. 327

RECORD, CASE Nos. 13,857 & 13,858.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO., 247.

BELLE N. B. WADE AND WARNER M. HOPKINS, TRUSTEES, APPELLANTS,

vs.

THE CHICAGO, SPRINGFIELD AND ST. LOUIS RAILROAD COMPANY, THE MERCANTILE TRUST COMPANY OF NEW YORK, ET AL.

TERM NO., 248.

THE AMERICAN LOAN AND TRUST COMPANY OF NEW YORK, APPELLANT,

vs.

BELLE N. B. WADE AND WARNER M. HOPKINS, TRUSTEES.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 21, 1889.

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INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	3	1
Subpœna	17	10
Marshal's return	19	10
Appearance of the Central Trust Co.	19	11

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	Original.	Print.
Appearance of the railroad companies	21	11
Answer of the Central Trust Co.	22	12
Answer of the railroad companies	23	13
Affidavit of C. C. Brown as to non-residence of the Mercantile Trust Company	24	14
Order on the Mercantile Trust Company to appear	25	14
Order on the Mercantile Trust Company and proof of service	26	14
Appearance of the Mercantile Trust Company	29	17
Answer of the Mercantile Trust Company	30	17
Release from the Mercantile Trust Co., May, 1887	33	19
Answer of the St. Louis & Chicago R'y Co.	36	20
Answer of the Litchfield & St. Louis R'y Co.	43	24
Answer of the Chicago, Springfield & St. Louis R. R. Co.	50	28
Replication to answer of the Mercantile Trust Co.	55	31
The St. Louis & Chicago R'y Co.	57	31
The Litchfield & St. Louis R'y Co.	58	33
The Chicago, Springfield & St. Louis R.R. Co.	59	33
Order extending time to take testimony	60	34
Order appointing L. L. Walbridge special master	60	34
Volney Hickox special master	61	35
Order extending time to take testimony	61	35
Order appointing L. L. Walbridge special master	62	35
Stipulation as to use of testimony, &c.	62	36
Order on defendants to close testimony	64	37
Motion to extend time to take testimony for defendants	64	37
Affidavit to extend time to take testimony for defendants	65	38
Order extending time to take testimony for defendants	66	39
Petition of the American Loan & Trust Co. for leave to intervene, June 8, 1889	67	39
Petition of the American Loan & Trust Co. for leave to intervene, June 22, 1889	69	41
Notice of motion for leave to intervene	71	42
Copy of petition for leave to intervene and proof of service of notice	73	43
Order making the American Loan & Trust Co. party defendant, &c.	77	46
Evidence for complainants before L. L. Walbridge, special examiner	79	47
Testimony of Duncan C. Best	79	47
James Kelly	81	48
Exhibit No. 1—Articles of incorporation of the Chicago, Springfield & St. Louis Railroad Company	94	56
No. 2—Articles of incorporation of the St. Louis & Chicago Railway Company	102	60
No. 3—Articles of incorporation of the Litchfield & St. Louis Railway Company	104	61
Testimony of W. B. Carter	107	63
J. H. Atterbury	115	67
Exhibit 4—Record of articles of incorporation, by-laws, and proceedings of the Chicago, Springfield & St. Louis Railroad Company	117	68
Articles of incorporation	117	68
Proceedings	124	72
By-laws	129	74
Proceedings	137	79
Contract for construction, March 3, 1883	150	85

	Original.	Print.
Exhibit 4—Form of bond and coupon	164	92
Mortgage	167	93
Proceedings	184	102
Contract for construction, April 29, 1885	201	112
Proceedings	213	118
Exhibit 5—Notice to defendants to produce papers, &c.	221	122
Order appointing special master	222	123
No. 6—Conveyance from the Empire Construction Company to H. H. Cooley & Co., May 26, 1885	227	125
No. 7—Conveyance from H. H. Cooley & Co. to the St. Louis & Chicago R'y Co., May 26, 1885	231	128
Testimony of Henry H. Beach	235	129
John J. McLean	252	139
E. Southworth	261	145
Examiner's certificate	307	173
Evidence for complainants before Geo. Brown, commissioner	308	173
Stipulation to take testimony and offers of evidence, &c.	308	173
Testimony of Warner M. Hopkins	311	175
Stipulation as to evidence, &c.	311	175
Commissioner's certificate	312	176
Stipulation as to evidence and offers of same	314	177
Testimony of L. S. Olmsted	316	178
B. F. Johnson	340	193
L. S. Olmsted (recalled)	368	211
B. F. Johnson (recalled)	370	212
Ordinance of the city of Litchfield, No. 360	372	213
Acceptance of ordinance No. 360	373	214
Ordinance of the city of Litchfield, No. 361	374	215
Ordinance of the city of Litchfield, No. 436	376	216
Notice to defendants to produce papers, &c.	378	217
Subpœna to B. F. Johnston	379	217
Evidence for defendants	380	218
Testimony of D. L. Wing	380	218
Agreement of Wade & Wing, November 5, 1883, &c.	406	232
Defendants' Exhibit B—Letter, Judson to Wing, Dec. 1, 1886	412	234
C—Letter, Judson to Wing, Dec. 15, 1886	413	234
D—Letter, Judson to Wing, Dec. 6, 1886	414	235
Decree of foreclosure and sale	416	235
Complainants' petition for rehearing	426	241
Allowance of appeals	431	244
Bond on appeal of complainants	431	244
Bond on appeal of American Loan & Trust Co.	433	245
Clerk's certificate	435	246
Assignment of errors by complainants	436	247

1 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Honorable Walter Q. Gresham, judge of the seventh judicial circuit, on Monday, the 5th day of August, in the June term of said court, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence the 114th year.

JAMES T. JONES, *Clerk.*

BELLE N. B. WADE and WARNER M. HOPKINS
vs.
CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD COMPANY, The St. Louis & Chicago Railway Company, The Litchfield & St. Louis Railway Company, The Mercantile Trust Company of New York, and Central Trust Company of New York. } In Chancery.

2 SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Belle N. B. Wade and Warner M. Hopkins, who are citizens of the State of Missouri, complainants, put in their place Messrs. Allen, Brown & Brown and Hough, Overall & Judson, their solicitors, in a bill of complaint against the defendants above named.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the 25th day of January, in the year of our Lord one thousand eight hundred and eighty-seven, came said complainants, by their solicitors, and filed in the clerk's office in the said court their bill of complaint, praying the issue of a writ of subpœna against said defendants; which said bill of complaint is in the words and figures following, to wit:

3 *Bill.*

In the Circuit Court of the United States for the Southern District of Illinois.

BELLE N. B. WADE, WARNER M. HOPKINS, Complainants,
vs.
THE CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD COMPANY, The St. Louis & Chicago Railway Company, The Litchfield & St. Louis Railway Company, The Mercantile Trust Company of New York, and The Central Trust Company of New York, Defendants.

To the honorable the judges of the circuit court of the United States for the southern district of Illinois, sitting in chancery:

Belle N. B. Wade and Warner M. Hopkins, citizens of the State of Missouri, bring this their bill of complaint against the Chicago, Springfield & St. Louis Railroad Company, a corporation created by

and existing under the laws of the State of Illinois and a citizen of the State of Illinois; the St. Louis & Chicago Railway Company, a corporation created by and existing under the laws of the State of Illinois and a citizen of the State of Illinois; the Litchfield & St. Louis Railway Company, a corporation created by and existing under the laws of the State of Illinois and a citizen of the State of Illinois; the Mercantile Trust Company, a body corporate under the laws of the State of New York and a citizen of said State, and the Central Trust Company of New York, a body corporate under
4 laws of New York and a citizen of said State; and thereupon your orators complain and say that on and prior to the first day of May, 1883, the said Chicago, Springfield & St. Louis Railroad Company, being a corporation as aforesaid under the laws of the State of Illinois, by its president and secretary and under its corporate seal, made and executed its twenty-five hundred ($2,500) bonds, numbered consecutively from 1 to 2,500, inclusive, each for the sum of one thousand ($1,000) dollars, bearing date on said first day of May, 1883, and by the terms of each of said bonds the said railroad company promised to pay to defendant The Central Trust Company or bearer the sum of one thousand ($1,000) dollars in gold coin of the United States of America not inferior to the then standard value on the first day of May, 1913, with interest thereon at the rate of six per cent. per annum, payable semi-annually in gold upon the first days of May and November of each year upon presentation and surrender of the annexed coupons as they severally became due; that the said bonds were so made and executed by said president and secretary by authority of the board of directors of said corporation, duly authorized thereto by vote of the stockholders of said railroad company duly convened for that purpose according to the statutes of the State of Illinois in such cases made and provided, at Litchfield, Illinois, on the 28th day of April, 1883, which said resolution is recited in the indenture of mortgage delivered to said Central Trust Company as hereinafter set forth; that of the said twenty-five hundred ($2,500) bonds so executed fifty bonds of the denomination of one thousand ($1,000) dollars each, being numbered 1 to 50, inclusive, were issued, delivered, and coupons duly attached and duly certified by defendant The Central Trust Company, as
5 trustee, according to the terms and conditions of said mortgage, and said fifty bonds are now outstanding, having been sold and delivered by said railroad corporation, and your orators are holders of the entire issue of said fifty bonds now outstanding as aforesaid; that on or about said first day of May, 1883, defendant The Chicago, Springfield & St. Louis Railroad Company, to secure the payment of the bonds hereinbefore mentioned, being thereunto by law duly authorized, executed, acknowledged, and delivered to the Central Trust Company of New York, as trustee, a certain mortgage or deed of trust dated that day therein and thereby conveying to said Central Trust Company, its successors or assigns, all and singular the several pieces or parcels of land forming the track or roadway of said railroad company from a point on the Gilman & Clinton branch of the Illinois Central railroad at the city of Spring-

field and extending by way of Litchfield and Mount Olive to the bridge junction at East St. Louis, Illinois, a distance of about ninety-eight miles, passing through the towns of Crow's Mill, Pawnee, White Oak, Litchfield, Mount Olive, Alhambra, Marine, Troy, and Collinsville and being in or through the counties of Sangamon, Montgomery, Macoupin, Madison, and St. Clair, whether the same was then acquired and owned by said railroad company or might be thereafter acquired and owned by said railroad company; also the railroad of said Chicago, Springfield & St. Louis Railroad Company and any and all branches thereof and any and all switches, turnouts, rails, bridges, depots, stations, station-houses, section-houses, fences, and other structures and appurtenances thereunto belonging then owned by said railroad company or that might thereafter be constructed, completed, finished, acquired, or owned by said railroad company, and also all the tools, incomes, issues, and profits and alienable franchises of said railroad company connected
6 with its railroad or relating thereto, including its right and franchises as a corporation, and also all and singular the property of every kind therein mentioned, whether then owned or that might be thereafter acquired and owned by said railroad company—that is to say, all the rolling stock of every description, all the machine shops, car shops, blacksmith shops, all the machinery, stationary engines, and all articles used in the construction, replacing, and repairing thereof, together with all the tools and material and any and all property then owned or thereafter to be acquired by said railroad company.

Your orators pray that said deed of trust or mortgage and all its provisions may be taken in all respect- as a part of this their bill of complaint; that said deed was duly recorded immediately after its said date in the offices of the recorder of deeds of the several counties of Sangamon, Montgomery, Macoupin, Madison, and St. Clair.

Your orators further say that at and prior to the execution of said deed of trust and bonds secured thereby the said railroad was being constructed for the said Chicago, Springfield & St. Louis Railroad Company by one D. L. Wing and one C. H. Wing and certain other persons to your orators unknown, associated together as a body corporate under name of Empire Construction Company; such work of construction was being done under terms of certain contract entered into between said construction company and said defendant railroad company, which said contract will be duly shown to the court. By the terms of said contract said Empire Construction Company undertook and agreed to acquire the right of way along said route for said railroad company and to construct, complete,
7 and equip sa- line of railroad. The said line of railroad was thereupon surveyed and located and the right of way from fifty to one hundred feet in width secured by purchase, gift, or otherwise by said construction company for said defendant, The Chicago, Springfield & St. Louis Railroad Company, for nearly the entire distance between the terminal points of said railroad, as described in the mortgage or deed of trust aforesaid, including right of way along Adams street and right of way one hundred feet wide over

Litchfield reservoir property, granted by ordinances of city of Litchfield; that the deeds and contracts for such right of way so secured by said construction company were not placed on record in the recorders' offices of the respective counties in which the land was situated, but said deeds and contracts were held in the possession of said D. L. Wing and his associates in said construction company.

And your orators further say that said route so located and right of way secured extended south from the city of Springfield, county of Sangamon, passing through towns of Crow's Mill, Pawnee, and White Oak to a point on the northern line of Montgomery county, and thence south through Bois D'Arc, Putnam, Zanesville, and North Litchfield, along Adams street, in said city, to a point on the track of the Indianapolis & St. Louis railroad, in the city of Litchfield, and thence extending southwardly through the city of Litchfield and South Litchfield township, in Montgomery county, Clyde township and Stanton township, in Macoupin county, to Mount Olive; thence south through Silver Creek township, in Madison county, to a point at or near Alhambra, in said county of Madison, and thence to the city of East St. Louis, in the county of St. Clair.

8 Your orators further say that they are unable at the present time to state with greater precision the description and boundaries of the right of way so acquired and secured for the defendant The Chicago, Springfield & St. Louis Railroad Company by the Empire Construction Company, for that the maps and surveys of said route are now in possession of said D. L. Wing or of the defendant herein, as hereafter detailed, and the deeds and contracts executed by the several land-owners and delivered to the Empire Construction Company for the several portions of said right of way were withheld from record by said D. L. Wing and said Empire Construction Company and were subsequently returned to the respective grantors or destroyed, as your orators are informed and as will be hereinafter set forth.

Your orators further say that said Empire Construction Company also caused work and labor to be done and material to be furnished in the work of constructing said railroad of the defendant The Chicago, Springfield & St. Louis Railroad Company along the route and on the right of way secured as aforesaid, caused a road-bed to be graded and bridges to be built over a large portion of the route, and at the time said fifty bonds hereinbefore mentione- as outstanding and held by your orators were certified by the Central Trust Company rails had been laid and the track completed upon two miles of said railroad.

Your orators say that said fifty bonds were certified and issued and delivered by said Central Trust Company to said Empire Construction Company under the provision of the aforesaid contract between said company and the said railroad company, parties thereto,

9 and were thereafter, as your orators are informed, negotiated by said construction company, and thereafter, after the certification and delivery of said bonds, other and further work of construction was done by said construction company under its

said contract, so that the grading and bridging of said railroad was completed over nearly the entire route, as aforesaid.

Your orators further say that after the execution, certification, delivery, and negotiation of the fifty bonds aforesaid and after the partial completion of the work of construction the said Empire Construction Company, controlled by D. L. Wing, abandoned the said work of construction, and thereafter said D. L. Wing confederated with other persons to your orators unknown in organizing the defendant company, The St. Louis & Chicago Railway Company, and caused said company to be organized as a railroad corporation under the laws of the State of Illinois to build and operate a railroad between the city of Springfield and the city of Litchfield; and your orators further say upon information and belief that said St. Louis & Chicago Railray Company was organized with the purpose and intent on the part of said Wing and his confederates in said organization of building its road for nearly the entire distance between said Springfield and Litchfield on the right of way and road-bed between said points acquired for the Chicago, Springfield & St. Louis Railroad Company, and to this end said Wing and his confederates thereupon caused the Empire Construction Company to convey to the said St. Louis & Chicago Railway Company all property acquired by said construction company for the Chicago, Springfield & St. Louis Railroad Company lying north of the track of the Indianapolis & St. Louis railroad, in the city of Litchfield, including all right of way secured or guaranteed, all embankments, excavations, trestle-work, bridges, tiling, profiles, maps, and surveys on and appertaining to said line of railroad, and said defendant, The St. Louis & Chicago Railway Company, thereupon took possession of all said property so acquired and proceeded, through said Wing and his confederates, with full notice of the rights of the Chicago, Springfield & St. Louis Railroad Company and of your orators under the deed trust aforesaid, to complete its own line of railroad between city of Litchfield and city of Springfield upon the right of way and road-bed so acquired as aforesaid for the Chicago, Springfield & St. Louis Railroad Company.

Your orator- further say that after the defendant The St. Louis & Chicago Railway Company had thus *y*aken possession of the property of defendant The Chicago, Springfield & St. Louis Railroad Company said St. Louis & Chicago Railway Company on or about July 1, 1885, conveyed and transferred all its property, rights, and franchises, including the road-bed and right of way and other property acquired as aforesaid for the Chicago, Springfield & St. Louis Railroad Company and subject to the lien of its mortgage as aforesaid, to the defendant The Mercantile Trust Company of New York in trust to secure the payment of five hundred mortgage bonds of the denomination of one thousand dollars each, and thereafter, to wit, on or about October 1, 1885, said St. Louis & Chicago Railway Company again conveyed and transferred all its property, rights, and franchises, including the said road-bed, right of way, and other

property acquired as aforesaid for the Chicago, Springfield & St. Louis Railroad Company and subject to the lien of its mortgage as aforesaid, to said defendant The Mercantile Trust Company of New York in trust to secure one thousand second mortgage bonds of said St. Louis & Chicago Railway Company of denomination of one thousand dollars each.

11 But your orators aver that said defendant The Mercantile Trust Company accepted said trusts and the holders of all the bonds secured by said two mortgages or deeds of trust received said bonds with full notice of and now hold the same subject to the prior rights of your orators as holders of the bonds of the Chicago, Springfield & St. Louis Railroad Company as aforesaid.

Your orators further say upon information and belief that said D. L. Wing and his confederates, controlling said St. Louis & Chicago Railway Company and intending to hinder and defraud your orators as holders of said outstanding bonds, have caused sundry deeds and contracts for right of way executed by the owners of real estate in the several townships of Montgomery county and Sangamon county on the route of the Chicago, Springfield & St. Louis Railroad Company to the Empire Construction Company or other persons for said railroad company or to said railroad company direct to be surrendered to the parties executing the same or for the same to be destroyed or cancelled and for new deeds or contracts for such right of way to be executed to the St. Louis & Chicago Railway Company, and in furtherence of said scheme of fraud have caused said deeds and contracts in favor of the St. Louis & Chicago Railway Company to be recorded in the respective counties. Your orators say that the names of said grantors and description of said several parcels cannot herein be fully set forth, but will be duly shown to the court.

Your orators further say that said Wing and his confederates have caused another railroad corporation to be organized under the laws of the State of Illinois, to wit, the Litchfield

12 & St. Louis Railway Company, for the purpose of building and operating a railroad from the southern limit of the said St. Louis & Chicago Railway Company, to wit, a point on the track of the Indianapolis & St. Louis railroad in the city of Litchfield, to a point at or near Alhambra, in the county of Madison, State of Illinois.

And your orators say upon information and belief that said Litchfield & St. Louis Railway Company was organized with the purpose and intent on the part of said Wing and his confederates of building its road for the entire distance between said Litchfield and Alhambra upon the right of way and road-bed between said points acquired for the Chicago, Springfield & St. Louis Railroad Company, and to this end said Wing and his confederates thereupon caused the said construction company to convey to said Litchfield & St. Louis Railway Company all property acquired by said Empire Construction Company for said Chicago, Springfield & St. Louis Railroad Company lying south of the track of the Indianapolis & St. Louis railroad in the city of Litchfield, including all right

of way and contracts for right of way secured and guaranteed, embankments, excavations, trestle-work, profilé, maps, and surveys and all other property on the line of said railroad, and said defendant, The Litchfield & St. Louis Railroad Company, has taken possession of all said property so acquired for the Chicago, Springfield & Railroad Company and *are* now proceeding, with full notice of the right of said Chicago, Springfield & St. Louis Railroad Company, to complete its own line of railroad upon the right of way, road-bed, and track of the Chicago, Springfield & St. Louis Railroad Company.

Your orators further *day* that thereafter, after the defendant The Litchfield & St. Louis Railroad Company *have* thus taken
13 possession of the property of the said defendant, The Chicago, Springfield & St. Louis Railroad Company, said Litchfield & St. Louis Railway Company on or about July 1, 1886, conveyed and transferred all its property, rights, and franchises, including its road-bed and right of way acquired for the Chicago, Springfield & St. Louis Railroad Company and subject to the lien of the mortgage as aforesaid, to the defendant The Central Trust Company of New York in trust to secure the payment of two hundred mortgaged bonds of the denomination of one thousand dollars each, and your orators aver that said Central Trust Company accepted said trust and the several holders of said bonds received the same — full notice of the rights and claims of your orators as holders of the bonds of the Chicago, Springfield & St. Louis Railroad Company and now hold said bonds of the Litchfield & St. Louis Railway Company subject to the prior rights of your orators as aforesaid.

Your orators further say that default has been made by said Chicago, Springfield & St. Louis Railroad Company in the payment of all the coupons annexed to said fifty bonds so issued as aforesaid and due on the 1 day of November, 1883; the 1 day of May, 1884; the 1st day of November, 1884; the 1st day of May, 1885; the 1st day of November, 1885; the 1st day of May, 1886, and the 1st day of November, 1886; that no part of the coupons maturing on said dates upon any of said bonds so issued have been paid.

Your orators further say upon information and belief that said Wing and his confederates, by name unknown to your orators, who have organized the said St. Louis & Chicago Railway Company and the said Litchfield & St. Louis Railway Company, and the said defendants, The St. Louis & Chicago Railway Company and The Litchfield & St. Louis Railway Company, now claim and pretend that the lien of the aforesaid deed of trust upon the right of way
14 acquired by and for the said Chicago, Springfield & St. Louis Railroad Company and the road-bed and other property acquired by and for said company no longer exists, and that they, the said defendant companies, The St. Louis & Chicago Railway Company and The Litchfield & St. Louis Railway Company, hold and enjoy said right of way, road-bed, and other property of the Chicago, Springfield & St. Louis Railroad Company discharged of the lien of said deed of trust executed by said last-named company.

Your orators say that said actions and doings and pretences are contrary to equity and good conscience; that the Chicago, Springfield & St. Louis Railroad Company is wholly insolvent, without means of any kind to pay its debts and obligations, but that all its property acquired for it by said Empire Construction Company is in the possession of the said defendant companies, The St. Louis & Chicago Railway Company and The Litchfield & St. Louis Railway Company; that the said property conveyed as aforesaid to said last-named companies was acquired by each of them with full notice of the rights and claims of the Chicago, Springfield & St. Louis Railroad Company and of your orators and of the deed of trust hereinbefore described; that the aforesaid conveyances to said last-named companies from the Empire Construction Company were made by passing a title through H. H. Cooley & Company, said H. H. Cooley & Company being a partnership composed of C. H. Wing and other parties to your — unknown, and all said conveyances will be duly shown to the court.

Your orators further say that they are the holders of all said fifty bonds issued as aforesaid by the Chicago, Springfield & St. Louis Railroad Company and certified by the Central Trust Company as aforesaid, being the entire issue of said bonds outstanding;
15 that they applied in writing to said trustee to file bill of complaint for foreclosure of said deed of trust, but said trustee declines to proceed in the execution of said trust, and said trustee is joined as defendant; that your orators are advised that said trustee has declared its purpose of resigning both its trustship in the said deed of trust executed by defendant The Chicago, Springfield & St. Louis Railroad Company and trustship in the aforesaid deed of trust executed by the Litchfield & St. Louis Railway Company, and your orators pray leave, in event successor of said trustee in said last-named trust is appointed, to substitute such successor as defendant herein.

In consideration of all which premises your orators, being without adequate relief except with the aid of this court, pray that defendants may be required to make answer respectively to all and singular the matters hereinbefore stated and charged as fully and particularly as if the same were expressed herein and they thereunto interrogated, but not under oath, and answer under oath being hereby waived; that an account be had and taken of the bonds and coupons secured by said deed of trust of the Chicago, Springfield & St. Louis Railroad Company and of the amount due thereon, and that an account be taken of all property of the Chicago, Springfield & St. Louis Railroad Company, whether acquired by or for said company before or after execution of said deed of trust, whether by or through the Empire Construction Company or otherwise; that the limits and boundaries of said right of way acquired or secured or contracted for said Chicago, Springfield and St. Louis Railroad Company by the Empire Construction Company aforesaid be ascertained and declared, and that the said deed of
16 trust may be declared to be a first lien upon all said property so acquired by or for the Chicago, Springfield & St. Louis

Railroad Company before or after the date of said deed of trust and prior to claim or right thereon of any of the parties defendant hereto under the other deeds of trust hereinbefore set forth or otherwise; that defendant The Chicago, Springfield & St. Louis Railroad Company be required within a limited time to pay into court for the use of the said holders of said bonds and coupons unpaid the amount found to be due and payable, and should default be made in such payment the entire franchise, property, premises, and appurtenances described and affected by said mortgage or deed of trust and all property subject to the lien of said mortgage be sold in one parcel and the proceeds thereof be applied, in the first instance, to the payment of all costs and expenses incurred by your orators and, — the next place, to be applied and administered to the payment of the bonds and coupons secured by said mortgage or deed of trust of the Chicago, Springfield & St. Louis Railroad Company so made to defendant The Central Trust Company, as hereinbefore set forth, and the surplus, if any there be, applied among such parties as may be just; and your orators further pray that a receiver or receivers be appointed herein by this court of the entire franchises, property, premises, and appurtenances of the defendant The Chicago, Springfield & St. Louis Railroad Company, including all the property mentioned and conveyed in said mortgage or deed of trust or subject to the lien thereof as aforesaid, and for such further relief as the nature of your orators' case may require or to justice and equity may appertain.

17 May it please your honor to grant unto your orators a writ of subpœna, to be directed to the said Chicago, Springfield & St. Louis Railroad Company, the St. Louis & Chicago Railway Company, the Litchfield & St. Louis Railway Company, the Mercantile Trust Company of New York, thereby commanding them and each of them, at a certain time and under a certain penalty to be therein limited, personally to appear before this honorable court and then and there full, true, and direct answer to make to all and singular the premises, and, further, to stand to, perform, and abide such further orders, direction, and decree therein as shall seem agreeable to equity and good conscience.

ALLEN, BROWN & BROWN,
HOUGH, OVERALL & JUDSON,
Solicitors and Counsel.

Afterwards, to wit, on said 25th day of January, in the year last aforesaid, a writ of subpœna was issued in said entitled cause out of the clerk's office of said court, directed and delivered to the marshal of said district to execute; which said writ is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

To the Chicago, Springfield & St. Louis Railroad Company, the St. Louis & Chicago Railway Company, the Litchfield & St. Louis Railway Company, and the Mercantile Trust Company of New York and the Central Trust Company of New York, Greeting:

We command you and every of you that you appear before
18 our judges of the circuit court of the United States of America for the southern district of Illinois, at Springfield, in said district, on the first Monday in the month of March next, to answer the bill of complaint of Belle N. B. Wade and Waren M. Hopkins this day filed in the clerk's office of said court, in said city of Springfield, then and there to receive and abide by such judgment and decree as shall then and thereafter —, upon pain of judgment being pronounced against you by default.

Attest L. S.

To the marshal of the southern district of Illinois to execute.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this 25th day of January, in the year of our Lord one thousand eight hundred and eighty-seven, and of our Independance the 111th year.

J. A. JONES, *Clerk.*

Memorandum.

The aboved-named defendants are notified that unless they shall enter their appearance in the clerk's office *in* said court, at Springfield aforesaid, on the date and day of which the above writ is returnable the complainants's bill will be dismissed against them as confessed and a decree entered accordingly.

J. A. JONES, *Clerk.*

19 *Return of Marshal.*

I have executed thid writ by reading the same and delivering a true copy thereof to Dwight L. Wing, president of the within-names defendant, The St. Louis & Chicago Railway Company, at Springfield, this 27th day of January, A. D. 1887.

H. W. WEBER, *U. S. Marshal.*
GEORGE W. SCHUESSLER, *Dept.*

I have executed this writ by reading the same and delivering a true copy thereof to George N. Black, president of the Chicago, Springfield & St. Louis Railroad Company, at Springfield, this 5th da- of February, A. D. 1887.

H. G. WEBER, *U. S. Marshal,*
By A. B. BRISCOE, *Dept.*

(Endorsed:) Filed March 26th, A. D. 1887. J. A. Jones, clerk.

Then, afterwards, to wit, in the year last aforesaid, came the Central Trust Company of New York, by Messrs. Butler, Stillman & Hubbard, its solicitors, and filed in the clerk's office of said court its appearance in the words and figures following, to wit:

Appearance of Central Trust Co.

In the Circuit Court of the United States, Southern District of Illinois.

20 BELLE N. B. WADE, WARNER M. HOPKINS, Complainants,
vs.
THE CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD Company, The St. Louis & Chicago Railway Company, The Litchfield & St. Louis Railway Company, The Mercantile Trust Company of New York, The Central Trust Company of New York, Defendants. } In Equity.

In above-entitled cause defendant The Central Trust Company of New York hereby enters its appearance as of March rules, 1887.

BUTLER, STILLMAN & HUBBARD,
Solicitors for Defendant Central Trust Company, 111 Broadway, N. Y. City.

(Endorsed:) Filed Jan. 29th, 1887. J. A. Jones, clerk.

Afterward, to wit, on the 4th day of March, in the year last aforesaid, came the Chicago, Springfield & St. Louis Railroad Company, the St. Louis & Chicago Railway Company, and the Litchfield & St. Louis Railway Company, by Messrs. Conkling & Grout, their solicitors, and filed in the clerk's office of said court their appearance in the words and figures following, to wit:

21 *Appearance of R. R. Co.'s.*

In the Circuit Court of the United States, Southern District of Illinois.

BELLE N. B. WADE, WARNER M. HOPKINS, Complainants,
vs.
THE CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD Company, The St. Louis & Chicago Railway Company, The Litchfield & St. Louis Railway Company, The Mercantile Trust Company of New York, and The Central Trust Company of New York, Defendants. } In Equity.

In above-entitled cause defendants The Chicago, Springfield & St. Louis Railroad Company, The St. Louis & Chicago Railway Com-

pany, The Litchfield & St. Louis Railway Company hereby enter their appearance as of March, 1887, rule day.

CONKLING & GROUT, *Solicitors.*

(Endorsed:) Filed March 4th, 1887. J. A. Jones, clerk.

The afterwards, to wit, on the said 4th day of March, in the year last aforesaid, came again the Central Trust Company of New York, by Messrs. Butler, Stillman & Hubbard, their solicitors, and filed in the clerk's office of said court its answer in the words and
22 figures following, to wit:

Answer of Central Trust Co.

In the Circuit Court of the United States for the Southern District of Illinois.

BELLE N. B. WADE and WAREN M. HOPKINS
against
THE CENTRAL TRUST COMPANY OF NEW YORK, Impleaded with the Chicago, Springfield & St. Louis Railroad Company and Others. } In Equity.

The Central Company of New York for its answer to the bill of complaint in this suit saith:

1. That it admits the execution and delivery to it of a certain deed of trust or mortgage by the Chicago, Springfield & St. Louis Railroad Company and the issue of fifty bonds thereunder, as in said bill of complaint alleged.

2. It admits the execution and delivery to it of a certain deed of trust or mortgage by the Litchfield & St. Louis Railway Company to secure the payment of 200 bonds of $1,000 each, substantially as in said bill alleged.

3. It admits that the complainants in said bill applied to this defendant to file a bill for the foreclosure of the mortgage made by the Chicago, Springfield & St. Louis Railroad Company, and that it refused to do so and declared its purpose of resigning its trusteeship under both of the mortgages aforesaid. It alleges that before the commencement of this suit it resigned as trustee under each of said mortgages; that the reason for such resignation was that it was advised by counsel that, owing to its trust relation to the
23 holders of bonds secured by each mortgage, it ought not to take part on behalf of one or the other in any controversy between such bondholders, and that the rights of the complainants could be fully protected in any suit or suits brought by said complainants in their own names.

4. This defendant is a stranger to all the other matters and things stated and set forth in said bill and has no knowledge thereof and

is not informed save by said bill whether or not the same be true; and it humbly prays to be hence dismissed.

BUTLER, STILLMAN & HUBBARD,
Solicitors of Defendant Central Trust Company,
111 *Broadway, New York City.*

(Endorsed:) Filed March 4th, 1887. J. A. Jones, clerk.

Now, afterwards, to wit, on the 4th day of April, in the year last aforesaid, came again the Chicago, Springfield & St. Louis Railroad Company, the St. Louis & Chicago Railway Company, and the Litchfield & St. Louis Railway Company, by Messrs. Conkling & Grout, their solicitors, and filed in the clerk's office of said court their answer in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern District of Illinois.

Answer of R. R. Co.'s.

In the Circuit Court, to the January Term, 1887.

BELLE N. B. WADE *et al.*
vs.
CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD CO. *et al.* } Bill.

24 And now comes the Chicago, Springfield & St. Louis Railroad Company, the St. Louis & Chicago Railway Company, and the Litchfield & St. Louis Railway Company, and for answer to the bill of complaint of the complainant herein filed say that they do not admit but deny each and every of the material allegations in said bill contained, and deny that they or either of them have been guilty of the several acts therein charged against them, and deny that complainant is entitled to the relief as prayed.

CONKLING & GROUT, *Solicitors.*

(Endorsed:) Filed April 4th, 1887. J. A. Jones, clerk.

Afterwards, on the 26th day of April, the year last aforesaid, an affidavit as to the non-residence of the Mercantile Trust Company of New York was filed in the clerk's office of said court; which said affidavit, together with the order of court thereon entered, is in the words and figures following, to wit:

pany, The Litchfield & St. Louis Railway Company hereby enter their appearance as of March, 1887, rule day.

CONKLING & GROUT, *Solicitors.*

(Endorsed:) Filed March 4th, 1887. J. A. Jones, clerk.

The afterwards, to wit, on the said 4th day of March, in the year last aforesaid, came again the Central Trust Company of New York, by Messrs. Butler, Stillman & Hubbard, their solicitors, and filed in the clerk's office of said court its answer in the words and
22 figures following, to wit:

Answer of Central Trust Co.

In the Circuit Court of the United States for the Southern District of Illinois.

BELLE N. B. WADE and WAREN M. HOPKINS
against
THE CENTRAL TRUST COMPANY OF NEW YORK, Impleaded with the Chicago, Springfield & St. Louis Railroad Company and Others. } In Equity.

The Central Company of New York for its answer to the bill of complaint in this suit saith:

1. That it admits the execution and delivery to it of a certain deed of trust or mortgage by the Chicago, Springfield & St. Louis Railroad Company and the issue of fifty bonds thereunder, as in said bill of complaint alleged.

2. It admits the execution and delivery to it of a certain deed of trust or mortgage by the Litchfield & St. Louis Railway Company to secure the payment of 200 bonds of $1,000 each, substantially as in said bill alleged.

3. It admits that the complainants in said bill applied to this defendant to file a bill for the foreclosure of the mortgage made by the Chicago, Springfield & St. Louis Railroad Company, and that it refused to do so and declared its purpose of resigning its trusteeship under both of the mortgages aforesaid. It alleges that before the commencement of this suit it resigned as trustee under each of said mortgages; that the reason for such resignation was that it was advised by counsel that, owing to its trust relation to the
23 holders of bonds secured by each mortgage, it ought not to take part on behalf of one or the other in any controversy between such bondholders, and that the rights of the complainants could be fully protected in any suit or suits brought by said complainants in their own names.

4. This defendant is a stranger to all the other matters and things stated and set forth in said bill and has no knowledge thereof and

is not informed save by said bill whether or not the same be true; and it humbly prays to be hence dismissed.

BUTLER, STILLMAN & HUBBARD,
Solicitors of Defendant Central Trust Company,
111 *Broadway, New York City.*

(Endorsed:) Filed March 4th, 1887. J. A. Jones, clerk.

Now, afterwards, to wit, on the 4th day of April, in the year last aforesaid, came again the Chicago, Springfield & St. Louis Railroad Company, the St. Louis & Chicago Railway Company, and the Litchfield & St. Louis Railway Company, by Messrs. Conkling & Grout, their solicitors, and filed in the clerk's office of said court their answer in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern District of Illinois.

Answer of R. R. Co.'s.

In the Circuit Court, to the January Term, 1887.

BELLE N. B. WADE *et al.*
vs.
CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD CO. *et al.* } Bill.

24 And now comes the Chicago, Springfield & St. Louis Railroad Company, the St. Louis & Chicago Railway Company, and the Litchfield & St. Louis Railway Company, and for answer to the bill of complaint of the complainant herein filed say that they do not admit but deny each and every of the material allegations in said bill contained, and deny that they or either of them have been guilty of the several acts therein charged against them, and deny that complainant is entitled to the relief as prayed.

CONKLING & GROUT, *Solicitors.*

(Endorsed:) Filed April 4th, 1887. J. A. Jones, clerk.

Afterwards, on the 26th day of April, the year last aforesaid, an affidavit as to the non-residence of the Mercantile Trust Company of New York was filed in the clerk's office of said court; which said affidavit, together with the order of court thereon entered, is in the words and figures following, to wit:

Affidavit of C. C. Brown as to Non-Residence of Mercantile Trust Co.

In the Circuit Court of the United States for the Southern District of Illinois.

BELLE N. B. WADE and WAREN M. HOPKINS, Complainants,
vs.
THE CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD COMPANY, The St. Louis & Chicago Railway Company, The Litchfield & St. Louis Railway Company, The Mercantile Trust Company of New York, and The Central Trust Company of New York, Defendants.

25 C. C. Brown, being duly sworn, deposes and says he is one of the counsel in said case, and that The Mercantile Trust Company of New York, one of the defendants in said case and interested in said suit, is not a resident of the State of Illinois, but, as he is informed and believes, resides in the city of New York, State of New York, and is doing business in said State as a corporation under and by virtue of the laws of said State.

C. C. BROWN.

Subscribed and sworn to before me by C. C. Brown this 26th April, 1887.

J. A. JONES, *Clerk.*

(Endorsed:) Filed April 26th, 1887. J. A. Jones, clerk.

Order on Mercantile Trust Co. to Appear.

To the Circuit Court of the United States for the Southern District of Illinois.

BELLE N. B. WADE and WAREN M. HOPKINS, Complainants,
vs.
THE CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD Company, The St. Louis & Chicago Railway Company, The Litchfield & St. Louis Railway Company, The Mercantile Trust Company of New York, and The Central Trust Company of New York. } In Chancery.

This day comes the complainant-, by their solicitors, Hough, Overall & Judson and C. C. and Stuart Brown, and it appearing to this court that the defendant The Mercantile Trust Company
26 of New York resides in the State of New York, in the city of New York, and cannot be served by the marshal of this district, it is therefore ordered by the court that said defendant The Mercantile Trust Company appear, plead, answer, or demur to said

complainants' bill of complaint on or before the 1st Monday in June, A. D. 1887.

(Endorsed:) Filed April 26th, 1887. J. A. Jones, clerk.

Now, afterwar-s, to wit, on the 5th day of May, in the year last aforesaid, copy of order on the Mercantile Trust Company of New York to appear, with affidavit of service thereof, was filed in the clerk's office of said court as follows, to wit:

Copy of Order & Aff't of Service.

In the Circuit Court of the United States for the Southern District of Illinois.

TUESDAY, *April 26th*, A. D. 1887.

Present: Hon. William J. Allen, district judge.

BELLE N. B. WADE and WARNER M. HOPKINS, Complainants, *vs.* THE CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD Company, The St. Louis & Chicago Railway Company, The Litchfield & St. Louis Railway Company, The Mercantile Trust Company of New York, The Central Trust Company of New York.	In Equity.

This day comes the complainants, by their solicitors, Hough, Overall & Judson and C. C. and Stuart Brown, and it appearing to the court that the defendant The Mercantile Trust Company
27 of New York resides in the State of New York, in the city of New York, and cannot be served by the marshal of this district—

It is therefore ordered by the court that said defendant The Mercantile Trust Company appear, plead, answer, or demur to said complainants' bill of complaint on or before the 1st Monday in June, A. D. 1887.

UNITED STATES OF AMERICA, *Southern District of Illinois*, } *ss:*

I, John A. Jones, clerk of said court, do hereby certify that the foregoing is a true and complete copy of an order of court this day entered in a certain cause wherein Belle N. B. Wade *et al.* are complainants and The Chicago, Springfield & St. Louis Railroad Company, The Mercantile Trust Company of New York, *et al.* are defendants, as the same appears of record in my said office.

In testimony whereof I hereunto subscrib- my name and affix the seal of said court, at Springfield, in said district, this 26th day of April, A. D. 1887.

[L. S.] J. A. JONES, *Clerk.*

In the Circuit Court of the United States, Southern District of Illinois.

BELLE N. B. WADE and WARNER M. HOPKINS, Complainants,
vs.
THE CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD Company, The St. Louis & Chicago Railway Company, The Litchfield & St. Louis Railway Co., The Mercantile Trust Co. of New York, The Central Trust Company of New York. } In Equity.

28 SOUTHERN DISTRICT OF NEW YORK, } *ss:*
City and County of New York, }

George N. Asquith, being duly sworn, says that he is of lawful age and that on the 2d day of May, 1887, at the city of New York, State of New York, he served the annexed order on the defendant The Mercantile Trust Company of New York by deliverin- a copy of said order, duly certified by the clerk of the United States circuit court for the southern district of Illinois, with the seal of said court attached, to Henry C. Deming, the secretary of the said Mercantile Trust Company of New York, at the office of said company in the city of New York.

Deponent further says that he knew the said Henry C. Deming to be the secretary of said company.

GEORGE N. ASQUITH.

Sworn to before me this 2d day of May, 1887.

JOHN McCLURE,
[L. S.] *Notary Public, N. Y. Co.*

STATE OF NEW YORK, } *ss:*
City and County of New York, }

I, James A. Flack, clerk of the city and county of New York and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that John McClure, before whom the annexed deposition was taken, was at the time of taking the same a notary public of New York, dwelling in said city and county, duly appointed and sworn and authorized to administer oaths to be used in any court in said State and for general purposes; that I am well acquainted with the handwriting of such notary, and that his signature is genuine as I verily believe.

In testimony whereof I have hereunto set my hand and
29 affixed the seal of the said court and county the 2d day of May, 1887.

JAMES A. FLACK, *Clerk.*

(Endorsed:) Filed May 5th, 1887. J. A. Jones, clerk.

Afterwards, to wit, on the 6th day of June, to the June term of said court, in the year last aforesaid, the following proceedings were had in said court in said cause and entered of record, to wit:

Entry of Appearance of Mercantile Trust Co.

BELLE N. B. WADE *et al.*
vs.
THE CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD COMPANY *et al.* } In Chancery.

This day comes the defendant The Mercantile Trust Company, by Messrs. Alexander & Greene, its solicitors, and enters its appearance herein.

And then afterwards, to wit, on the 2d day of July, in the year last aforesaid, came the defendant The Mercantile Trust Company, by Messrs. Alexander & Green, its solicitors, and filed in the clerk's office of said court its answer in the words and figures following, to wit:

30 *Answer of Mercantile Trust Co.*

Circuit Court of the United States for the Southern District of Illinois.

BELLE N. B. WADE and WAREN M. HOPKINS, Complainants,
vs.
THE CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD Company, The Mercantile Trust Company, and Others, Defendants. } In Equity.

The answer of The Mercantile Trust Company, one of the defendants herein, to the bill of complaint of the complainants herein.

This defendant, now and at all time- hereafter saving and reserving to itself all and all manner of benefit and advantage or exception to the many errors and insufficiencies in the said bill of complaint, for answer to so much and such parts thereof as this defendant is advised are material for it to make answer unto, *it* answers and says:

This defendant admits that the St. Louis & Chicago Railway Company is a corporation created by and existing under and by virtue of the laws of the State of Illinois and a citizen of the State of Illinois, and that the defendant is a body corporate under the laws of the State of New York and a citizen of that State, and that the Central Trust Company of New York is a body corporate under the laws of the State of New York and a citizen of said State; and this defendant further admits that the St. Louis & Chicago Railway Company did on or about the 1st day of July, 1885,
31 convey and transfer its property, rights, and franchises to this defendant in trust to secure the payment of certain first-mortgage bonds, and this defendant begs leave to refer to the mortgage or deed of trust conveying such property to this defend-

ant, and to the bonds thereby secured, or to copies thereof, if and when the same shall be produced, for a more particular description of the contents thereof.

This defendant further admits that the St. Louis & Chicago Railway Company on or about the 1st day of October, 1885, conveyed all its property, rights, and franchises to this defendant in trust to secure an issue of second-mortgage bonds, and this defendant begs leave to refer to the second mortgage or deed of trust conveying such property, rights, and franchises and the bonds secured thereby or to copies thereof, if and when the same shall be produced, for a more particular description of the contents thereof.

This defendant denies that it accepted the trust created by said instruments with full notice of and subject to the prior rights of the complainants in said bill of complaint as alleged holders of the bonds of the Chicago, Springfield & St. Louis Railroad Company.

As to all matters in the said bill of complaint contained not hereinbefore specifically admitted or denied, this defendant is not informed except by said bill of complaint, and therefore can neither admit nor deny the truth of the allegations in that regard in the said bill of complaint contained, and in reference to such matters this defendant leaves the said complainants to make such proof as they may be advised.

32 This defendant, further answering, says that on or about the 15th day of June, 1887, by an instrument in writing under its corporate or common seal and attested by the signatures of its president and secretary, this defendant released all the right, title, and interest which it had or might have under and by virtue of the said second mortgage of the St. Louis & Chicago Railway Company, dated the 1st day of October, 1885, and since that time this defendant has not claimed and does not claim under and by virtue of the terms of said second mortgage any interest in or lien upon the premises therein described or any part thereof; but this defendant does not waive or disclaim any interest in or lien upon the premises described in the first mortgage of the said St. Louis & Chicago Railway Company in said bill of complaint set forth and hereinbefore referred to, and this defendant begs leave to refer to a copy of said release, which is hereunto annexed and which this defendant prays may be taken as a part of this its answer.

Without this, that no other matter or thing in the said bill of complaint contained and material or necessary for this defendant to make answer unto and not herein or hereby well and sufficiently answered, confessed or averred, traversed or denied, is true to the knowledge or belief of this defendant; all of which matters and things this defendant is willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays that it may be dismissed hence with all reasonable costs and charges in its behalf most wrongfully sustained.

And this defendant, The Mercantile Trust Company, does hereby aver and verify the truth and facts of the averments con-

33 tained in the foregoing answer under its common seal, which

it has for that purpose caused to be hereunto affixed and attested by the signature of its vice-president, E. L. Montgomery.

THE MERCANTILE TRUST COMPANY,
[SEAL.] By E. L. MONTGOMERY, *Vice-President.*

ALEXANDER & GREENE,
Solicitors and Counsel for Defendant,
10 *Wall Street, New York City.*

Know all men by these presents—

Whereas heretofore, to wit, on or about the 1st day of October, 1885, by indenture dated on that day and recorded in the office of the recorder of Montgomery county, Illinois, on the 31st day of December, 1885, in vol. 23 of Mortgages, at page —, and in the office of the recorder of Sangamon county on the 1st day of June, 1885, in Book 83 of Mortgages, at page —, the St. Louis & Chicago Railway Company conveyed to the Mercantile Trust Company, trustee, lands, premises, and property in said indenture described upon the trusts and with the powers and for the purposes in said indenture described, amounting in the aggregate to five hundred thousand dollars ($500,000);

And whereas it was expressly agreed in said indenture that upon payment of the principal and interest of said bonds the conveyance thereby granted to the said The Mercantile Trust Company, trustee,
should be void, and that all and singular the premises and
34 property thereby conveyed should revert to the party of the
first part, the said St. Louis & Chicago Railway Company;

And whereas the total number of bonds issued under and secured by said indenture have been surrendered to the said The Mercantile Trust Company, trustee, and have been cancelled and destroyed;

And whereas the execution of this agreement has been requested by the said St. Louis & Chicago Railway Company:

Now, therefore, the said The Mercantile Trust Company, trustee, does hereby release and discharge from the lien of the said indenture dated the first day of October, 1885, all and singular the premises and property therein described; to have and to hold the same to the said St. Louis & Chicago Railway Company as fully as if the said indenture had never been executed.

In witness whereof the Mercantile Trust Company has caused these presents to be signed by its president and caused it- corporate seal to be hereto affixed and attested by its secretary this — May, 1887.

THE MERCANTILE TRUST COMPANY,
[SEAL.] By LOUIS FITZGERALD, *President.*

Attest: H. C. DEMING, *Secretary.*

Be it remembered that on the 15th day of June, in the year one thousand eight hundred and eighty-seven, before me, the undersigned, William H. Clarkson, a notary public for New York
35 county and a commissioner resident in the city of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Illinois to take acknowledgements

of deeds, &c., to be used and recorded in said State of Illinois, personally appeared Louis Fitzgerald, president of the Mercantile Trust Company, who is personally known to me to be the identical person whose name is subscribed to the foregoing instrument, who, being by me duly sworn, deposes and says that he resides at the city of New York; that he — the president of that Mercantile Trust Company; that he knows the corporate seal thereof, and that the seal affixed to said instrument is the corporate seal of said company and was affixed by the order of said company, and that he signed his name thereto by the like order as such president of said company, and said Louis Fitzgerald further acknowledged that he executed and delivered the said instrument as his free and voluntary act and deed for the uses and purposes therein set forth, and that said company also executed the said instrument as its free and voluntary act and deed for the uses and the purpose- therein set forth.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

[SEAL.] WILLIAM H. CLARKSON,
Commissioner of the State of Illinois—Office, New York City—and Notary Public for New York County, N. Y.

(Endorsed:) Filed July 2d, 1887. James T. Jones, clerk.

36 Then afterwards, to wit, on the second day of August, in the year last aforesaid, came The St. Louis & Chicago Railway Company, The Litchfield & St. Louis Railway Company, and The Chicago, Springfield & St. Louis Railroad Company, by Messrs. Conkling & Grout, their solicitors, and filed their several answers herein; which answers are in words and figures following, to wit:

Answer of St. Louis & Chicago R'y Co.

Circuit Court of the United States for the Southern District of Illinois.

BELLE N. B. WADE and WAREN M. HOPKINS, Complainants,
vs.
THE CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD Company, The Mercantile Trust Company, and Others, Defendants. } In Equity.

The answer of The St. Louis & Chicago Railway Company, one of the defendants herein, to the bill of complaint of the complainants herein.

This defendant, now and at all times hereafter saving and reserving unto itself all and all manner of benefit and advantage or exception to the many errors and insufficiencies in the said bill of complaint, for answer to so much and such parts thereof as this defendant is advised are material for it to make answer unto, *it* answers and says:

This defendant admits that the Chicago, Springfield & St. Louis Railroad Company is a corporation created by and existing
37 under and by virtue of the laws of the State of Illinois and a citizen of the State of Illinois, and that this defendant is a body corporate under the laws of the State of Illinois and a citizen of that State; that the Litchfield & St. Louis Railway Company is a corporation created by and existing under the laws of the State of Illinois and a citizen of that State; that the Mercantile Trust Company is a body corporate under the laws of the State of New York and a citizen of the said State; that the Central Trust Company of New York is a body corporate under the laws of the State of New York and a citizen of said State.

This defendant further admits that the Chicago, Springfield & St. Louis Railroad Company, being a corporation as aforesaid under the laws of the State of Illinois, by its president and secretary and under its corporate seal, made and executed its twenty-five hundred (2,500) bonds, numbered consecutively from one to twenty-five hundred, inclusive, each for the sum of one thousand — ($1,000), bearing date on the said first day of May, 1883, all in the manner and form as stated in the said bill of complaint, and secured by the mortgage hereinafter mentioned; that of the said twenty-five hundred (2,500) bonds so executed fifty bonds, of the denomination of one thousand dollars ($1,000) each, being numbered from 1 to 50, inclusive, were issued, delivered, and coupons attached and duly certified by defendant The Central Trust Company, as trustee, according to the terms and conditions of said mortgage, and said fifty bonds are now outstanding, having been sold and delivered by said railroad corporation, and that complainants are holders of the entire issue of said fifty bonds now outstanding as aforesaid; that on or about said first day of May, 1883, defendant The Chicago, Springfield & St.
38 Louis Railroad Company, to secure the payment of the bonds hereinbefore mentioned, being thereunto by law duly authorized, executed and acknowledged and delivered to the Central Trust Company of New York, as trustee, a certain mortgage or deed of trust, dated that day, therein and thereby conveying to said Central Trust Company, its successors or assigns, all and singular the several pieces or parcels of land forming the track or road way of said railroad company from a point on the line of the Gilman & Clinton branch of the Illinois Central railroad at the city of Springfield and extending by way of Litchfield and Mount Olive to the bridge junction at East St. Louis, Illinois, together with certain other property in said mortgage mentioned, all in manner and form as stated in said bill of complaint, so far as defendant is now advised, but for greater certainty it asks for the production of said mortgage or a duly certified copy thereof.

This defendant further admits that the Empire Construction Company, a corporation under the laws of the State of Illinois and composed at the time of D. L. Wing and C. H. Wing and W. W. Hewitt, proceeded to construct said railroad for said defendant, The Chicago, Springfield & St. Louis Railroad Company, but that this was after the said bonds were issued and mortgage made and both

delivered to the said Central Trust Company; that the work was done under a contract between the parties, for the condition of which reference is made to the same, offered to be produced by complainant- in evidence.

This defendant further admits that the line of said railroad was surveyed and located and certain contracts for right of way obtained by said Empire Construction Company for a small portion of the line, but the said defendant, The Chicago, Springfield & St. Louis Railroad Company, had only a contingent interest therein; that it never, at any time, became entitled to, nor did it have any interest in, the same except as to a part of Adams street, in
39 the city of Litchfield, Illinois, and as to that part the defendant last aforesaid only had a license to pass over that part of the said street, which license has long since been revoked by the city council of the said city of Litchfield.

This defendant admits that said Empire Construction Company caused work and labor to be done and material to be furnished in the work of constructing said road, and that about two miles of said railroad track had been laid at the time stated; that this track so laid on Adams street, in the city of Litchfield, in the State of Illinois, — over a public highway over which said Chicago, Springfield & St. Louis Railroad Company had permission to lay its track; that all the ties, rails, and other material of which the track was constructed were afterwards and without the knowledge of or consent of said last-mentioned defendant unlawfully and by sundry evil-disposed persons torn up and converted to their own use, and that the said last-mentioned defendant is now endeavoring by appropriate legal remedies to recover damages for such unlawful conversion; that *this* two miles of track extended along said street north from the right of way of the Indianapolis & St. Louis Railroad Company's right of way, and the license therefore was afterwards revoked for cause by said city and given to another railway company.

This defendant admits that said fifty bonds were certified and issued and delivered, as stated, by said Central Trust Company to the Empire Construction Company, as stated, but aver- that the same were in payment of said two miles of track as aforesaid, and that this was all the right of way, road-bed, grading, bridging, or track ever at any time acquired by the Chicago, Springfield & St. Louis Railroad Company or to which it had any right, and is the only property which ever came within the terms of said deed of trust or
40 mortgage.

This defendant admits that the Empire Construction Company stopped the said work of construction after the delivery of said bonds, but that this was done for good reasons, as will be duly shown, and by mutual consent.

This defendant denies that the St. Louis & Chicago Railway Company has taken possession of any of the Chicago, Springfield & St. Louis Railroad Company's property.

This defendant denies that the Litchfield & St. Louis Railway Company has taken possession of any of the Chicago, Springfield & St. Louis Railroad Company's property.

This defendant admits that default has been made in the payment of the said bonds and coupons, as stated, and that it is insolvent, but denies that any of the Chicago, Springfield & St. Louis Railroad Company's property is in possession of any of the defendants herein charged.

This defendant denies that one D. L. Wing, confederating with other persons, organized the St. Louis & Chicago Railway Company and caused the same to be incorporated, as charged, for the purpose and with the intent of building its road for nearly the entire distance between said Springfield and Litchfield on the right of way and road-bed between said points acquired for the Chicago, Springfield & St. Louis Railroad Company, or that to this end said Wing and confederates caused any conveyance to said St. Louis & Chicago Railway Company of the property described in and as charged in complainants' bill.

This defendant denies that either the St. Louis & Chicago Railway Company or the Litchfield & St. Louis Railway Company took possession of any property belonging to or acquired for the Chicago, Springfield & St. Louis Railroad Company, but admits that
41 said St. Louis & Chicago Railway Company on or about July 1st, 1885, made a mortgage to the Mercantile Trust Company of New York upon its own property as described therein, and being the same mortgage referred to in complainants' bill, but not being upon any property of any kind belonging to the Chicago, Springfield & St. Louis Railroad Company.

This defendant denies any confederacy upon the part of D. L. Wing and other- to hinder and defraud complainants by causing sundry deed- and contracts for right of way executed by owners of real estate along the line of the Chicago, Springfield & St. Louis Railroad Company to the Empire Construction Company or other persons for said railroad company or to said railroad company direct to be surrendered to the parties executing the same for the same to be destroyed or cancelled and for new deeds or contracts for such right of way to be executed to the St. Louis & Chicago Railway Company, and that in furtherance of said alleged scheme of fraud have caused said deeds and contracts in favor of the St. Louis & Chicago Railway Company to be recorded as charged in complainants' bill.

This defendant denies that the said Wing and his confederates have caused another railroad corporation to be organized, to wit, the Litchfield & St. Louis Railway Company, for the purpose of building and operating a railroad between the points in the bill charged for the purpose of building said road for the entire distance between said points upon the right of way and road-bed falsely alleged to have been acquired for the Chicago, Springfield & St. Louis Railroad Company, or that he and they to that end caused said construction company to convey to said Litchfield & St. Louis Railway Company the property in said bill of complaint described.

42 This defendant admits that it executed and delivered on or about July 1st, 1886, a mortgage upon its own property (but not upon any property belonging to or acquired for said Chicago,

Springfield & St. Louis Railroad Company) to the Central Trust Company of New York, as described in the bill of complaint herein.

This defendant denies that there is any lien in favor of the complainants upon any property now held or claimed by any of the defendants herein.

As to all matters in said bill of complaint contained not hereinbefore specifically admitted or denied this defendant is not informed except by said bill of complaint, and therefore can neither admit nor deny the truth of the allegations in that regard in said bill of complaint contained, and in reference to such matters this defendant leaves the said complainants to make such proof as they may be advised.

Without this, that no other matter or thing in the said bill of complaint contained and material and necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed or averred, traversed or denied, is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays that it may be dismissed hence with all reasonable costs and charges in its behalf most wrongfully sustained.

ST. LOUIS & CHICAGO RAILWAY COMPANY.
CONKLING & GROUT, *Solicitors.*

(Endorsed :) Filed August 2d, 1887. James T. Jones, clerk.

43 *Answer of Litchfield & St. Louis R'y Company.*

Circuit Court of the United States for the Southern District of Illinois.

BELLE N. B. WADE and WAREN M. HOPKINS, Complainants,
vs.
THE CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD Company, The Mercantile Trust Company, and Others, Defendants. } In Equity.

The answer of The Litchfield & St. Louis Railway Company, one of the defendants herein, to the bill of complaint of the complainants herein.

This defendant, now and at all time- hereafter saving and reserving unto itself all and all manner of benefit and advantage or exception to the many errors and insufficiencies in the said bill of complaint, for answer to so much and such parts thereof as this defendant is advised are material for it to make answer unto, *it* answers and says :

This defendant admits that the Chicago, Springfield & St. Louis Railroad Company is a corporation created by and existing under and by virtue of the laws of the State of Illinois and a citizen of the State of Illinois, and that this defendant is a body corporate under

the laws of the State of Illinois and a citizen of that State; that the St. Louis & Chicago Railway Company is a corporation cre-
44 ated by and existing under the laws of the State of Illinois and a citizen of that State; that the Mercantile Trust Company is a body corporate under the laws of the State of New York and a citizen of the said State; that the Central Trust Company of New York is a body corporate under the laws of the State of New York and a citizen of said State.

This defendant further admits that the Chicago, Springfield & St. Louis Railroad Company, being a corporation as aforesaid under the laws of the State of Illinois, by its president and secretary and under its corporate seal, made and executed its twenty-five hundred (2,500) bonds, numbered consecutively from 1 to 2500, inclusive, each for the sum of one thousand — (1,000), bearing date on the said 1st day of May, 1883, all in the manner and form as stated in said bill of complaint and secured by the mortgage hereinafter mentioned; that of the said twenty-five hundred (2,500) bonds so executed fifty bonds of the denomination of one thousand dollars (1,000) each, being numbered from 1 to 50, inclusive, were issued, delivered, and coupons attached and duly certified by defendant The Central Trust Company, as trustee, according to the terms and conditions of said mortgage, and said fifty bonds are now outstanding, having been sold and delivered by said railroad corporation, and that complainants are holders of the entire issue of said fifty bonds now outstanding as aforesaid; that on or about the said 1st day of May, 1883, defendant The Chicago, Springfield & St. Louis Railroad Company, to secure the payment of the bonds hereinbefore mentioned, being thereunto by law duly authorized, executed and acknowledged and delivered to the Central Trust Company of New York, as trustee, a certain mortgage or deed of trust, dated that day, therein and thereby conveying to said Central Trust Company, its successors or assigns, all and singular the several pieces or
45 parcels of land forming the track or roadway of said railroad company from a point on a line of the Gilman & Clinton branch of the Illinois Central railroad, at the city of Springfield, and extending by way of Litchfield and Mount Olive to the bridge junction at East St. Louis, Illinois, together with certain other property in said mortgage mentioned, all in manner and form as stated in said bill of complaint so far as defendant is now advised, but for greater certainty it asks for the production of said mortgage or a duly certified copy thereof.

This defendant further admits that the Empire Construction Company, a corporation under the laws of the State of Illinois and composed at the time of D. L. Wing and C. H. Wing and W. W. Hewitt, proceeded to construct said railroad for said defendant, The Chicago, Springfield & St. Louis Railroad Company, but that this was after the said bonds were issued and mortgage made and both delivered to the said Central Trust Company; that the work was done under a certain contract between the parties, for the conditions of which reference is made to the same, offered to be produced by complainant- in evidence.

This defendant further admits that the line of said railroad was surveyed and located and certain contracts for rights of way obtained by said Empire Construction Company for a small portion of the line; but the said defendant, The Chicago, Springfield & St. Louis Railroad Company, had only a contingent interest therein, and that it never at any time became entitled to nor did it have any interest in the same except as to a part of Adams street, in the city of Litchfield, Illinois, and as to that part the defendant last aforesaid only had a license to pass over that part of the said street, which license has long since been revoked by the city council of the said city of Litchfield.

46 This defendant admits that said Empire Construction Company caused work and labor to be done and material to be furnished in the work of constructing said road, and that about two miles of said railroad track had been laid at the time stated; that this track so laid on Adams street, in the city of Litchfield, in the State of Illinois, — over a public highway over which the said Chicago, Springfield & St. Louis Railroad Company had permission to lay its track; that all the ties, rails, and other material of which the track was constructed were afterwards and without the knowledge of or consent of said last-mentioned defendant unlawfully and by sundry evil-disposed persons torn up and converted to their own use, and that the said defendant is now endeavoring by appropriate legal remedies to recover damages for such unlawful conversion; that *this* two miles of track extended along said street north from the right of way of the Indianapolis & St. Louis Railroad Company'- right of way, and the license therefor was afterwards revoked for cause by said city and given to another railway company.

This defendant admits that said fifty bonds were certified and issued and delivered, as stated, by said Central Trust Company to the Empire Construction Company, as stated, but aver- that the same were in payment of said two miles of track as aforesaid, and that this was all the right of way, road-bed, grading, bridging, or track ever at any time acquired by the Chicago, Springfield & St. Louis Railroad Company or to which it had any right and is the only property which ever came within the terms of said deed of trust or mortgage.

This defendant admits that the Empire Construction Company stopped the said work of construction after the delivery of said bonds, but that this was done for goods reasons, as will be

47 duly shown, by mutual consent. This defendant denies that the St. Louis & Chicago Railway Company has taken possession of any of the Chicago, Springfield & St. Louis Railroad Company'- property.

This defendant denies that the Litchfield & St. Louis Railway Company has taken possession of any of the Chicago, Springfield & St. Louis Railroad Company's property.

This defendant admits that default has been made in the payment of the said bonds and coupons as stated and that it is insolvent, but denies that any of the property of the Chicago, Springfield

& St. Louis Railroad Company is in possession of any of the defendants herein as charged.

This defendant denies that one D. L. Wing, confederating with other persons, organized the St. Louis & Chicago Railway Company and caused the same to be incorporated as charged for the purpose and with the intent of building its road for nearly the entire distance between said Springfield and Litchfield on the right of way and road-bed between said points acquired for the Chicago, Springfield & St. Louis Railroad Company, or that to this end said Wing and confederates caused any conveyance to said St. Louis & Chicago Railway Company of the property described in and as charged in complainants' bill.

This defendant denies that either the St. Louis & Chicago Railway Company or the Litchfield & St. Louis Railway Company took possession of any property belonging to or acquired for the Chicago, Springfield & St. Louis Railroad Company, but admits that said St. Louis & Chicago Railway Company on or about July 1st, 1885, made a mortgage to the Mercantile Trust Company of New York upon its own property as described therein and being the same mortgage referred to in complainants' bill, but not being
48 upon any property of any kind belonging to the Chicago, Springfield & St. Louis Railroad Company.

This defendant denies any confederacy upon the part of D. L. Wing and others to hinder and defraud complainant by causing sundry deeds and contracts for right of way executed by owners of real estate along the line of the Chicago, Springfield & St. Louis railroad to the Empire Construction Company or other persons for said railroad company or to said railroad company direct to be surrendered to the parties executing the same for the same to be destroyed or cancelled and for new deeds or contracts for such right of way to be executed to the St. Louis & Chicago Railway Company, and that in furtherance of said alleged scheme of fraud — have caused said deeds and contracts in favor of the St. Louis & Chicago Railway Company to be recorded as charged in complainants' bill.

This defendant denies that said Wing and his confederates have caused another railroad corporation to be organized, to wit, the Litchfield & St. Louis Railway Company, for the purpose of building and operating a railroad between the points in the bill charged for the purpose of building said road for the entire distance between said points upon the right of way and road-bed falsely alleged to have been acquired for the Chicago, Springfield & St. Louis Railroad Company, or that he and they to that end caused said construction company to convey to said Litchfield & St. Louis Railway Company the property in said bill of complaint described.

This defendant admits that it executed and delivered, on or about July 1, 1886, a mortgage upon its own property (but not on any property belonging to or acquired for said Chicago, Springfield & St. Louis Railroad Company) to the Central Trust Company
49 of New York as described in the bill of complaint herein. This defendant denies that there is any lien in favor of the

complainants upon any property now held or claimed by any of the defendants herein.

As to all matters in said bill of complaint contained not hereinbefore specifically admitted or denied this defendant is not informed except by said bill of complaint, and therefore can neither admit nor deny the truth of the allegations in that regard in said bill of complaint contained, and in reference to such matters this defendant leaves the said complainants to make such proof as they may be advised.

Without this, that no other matter or thing in the said bill of complaint contained and material or necessary for this defendant to make answer unto and not herein or hereby well and sufficiently answered, confessed or averred, traversed or denied, is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays that it may be dismissed hence with all reasonable costs and charges in its behalf most wrongfully sustained.

LITCHFIELD & ST. LOUIS RAILWAY CO.

CONKLING & GROUT, *Solicitors.*

(Endorsed:) Filed August 2d, 1887. James T. Jones, clerk.

50 *Answer of Chicago, Springfield & St. Louis R. R. Company.*

Circuit Court of the United States for the Southern District of Illinois.

BELLE N. B. WADE and WAREN M. HOPKINS, Complainants,
vs.
THE CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD COMPANY, The Mercantile Trust Company, and Others, Defendants. } In Equity.

The answer of The Chicago, Springfield & St. Louis Railroad Company, one of the defendants herein, to the bill of complaint of the complainants herein.

The defendant, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage or exception to the many errors and insufficiencies in the said bill of complaint, for answer to so much and such parts thereof as this defendant is advised are material for it to make answer unto, *it* answers and says:

This defendant admits that the St. Louis & Chicago Railway Company is a corporation created by and existing under and by virtue of the laws of the State of Illinois and a citizen of the State of Illinois, and that this defendant is a body corporate under the laws of the State of Illinois and a citizen of that State; that the Litchfield & St. Louis Railroad Company is a corporation created

by and existing under the laws of the State of Illinois and
51 a citizen of that State; that the Mercantile Trust Company is a body corporate under the laws of the State of New York and a citizen of said State; that the Central Trust Company of New York is a body corporate under the laws of the State of New York and a citizen of said State.

This defendant further admits that the Chicago, Springfield & St. Louis Railroad Company, being a corporation as aforesaid under the laws of the State of Illinois, by its president and secretary and under its corporate seal, made and executed its twenty-five hundred (2,500) bonds, numbered consecutively from 1 to 2,500, inclusive, each for the sum of one thousand ($1,000) dollars, bearing date on first day of May, 1883, all in manner and form as stated in said bill of complaint, and secured by the mortgage hereinafter mentioned; that of the said twenty-five hundred (2,500) bonds so executed fifty bonds of the denomination of one thousand (1,000) dollars each, being numbered 1 to 50, inclusive, were issued, delivered, and coupons attached and duly certified by defendant The Central Trust Company, as trustee, according to the terms and conditions of said mortgage, and said fifty bonds are now outstanding, having been sold and delivered by said railroad corporation, and that complainants are holders of the entire issue of said fifty bonds now outstanding as aforesaid; that on or about said first day of May, 1883, defendant The Chicago, Springfield & St. Louis Railroad Company, to secure the payment of the bonds hereinbefore mentioned, being thereunto by law duly authorized, executed, acknowledged, and delivered to the Central Trust Company of New York, as trustee, a certain mortgage or deed of trust, dated that day, therein and thereby conveying to said Central Trust Company, its successors or assigns,
all and singular the several pieces or parcels of land form-
52 ing the track or roadway of said railroad company from a point on the Gilman & Clinton branch of the Illinois Central railroad, at the city of Springfield, and extending by way of Litchfield and Mount Olive to the bridge junction at East St. Louis, Illinois, together with certain other property in said mortgage mentioned, all in manner and form as stated in said bill of complaint, so far as defendant is now advised, but for greater certainty it asks for the production of said mortgage or a duly certified copy thereof.

This defendant further admits that the Empire Construction Company, a corporation under the laws of the State of Illinois, and composed at the time of D. L. Wing and C. H. Wing and W. W. Hewitt, proceeded to construct said railroad for said defendant, but that this was after the said bonds were issued and mortgage made and both delivered to the Central Trust Company; that the work was done under a certain contract between the parties, for the conditions of which reference is made to the same, offered to be produced by complainant- in evidence.

This defendant further admits that the line of said railroad was surveyed and located and certain contracts for rights of way obtained by said Empire Construction Company for a small portion

of the line, but the said defendant had only a contingent interest therein, and that it never at any time became entitled to nor did it have any interest in the same, except as to a part of Adams street, in the city of Litchfield, Illinois, and as to that part this defendant only had a license to pass over that part of the said street, which license has long since been revoked by the city council of the said city of Litchfield.

53 This defendant denies that it received any deeds for any right of way for its said road or any contracts therefore; that it never did nor does it now own or have any right to any such right of way. It admits the general course of its line to have been as stated in the said bill of complaint, but refers to the proof that may be offered for greater certainty.

This defendant admits that said Empire Construction Company caused work and labor to be done and material to be furnished in the work of constructing said road, and that about two miles of said railroad track had been laid at the time stated; that this track so laid was on Adams street, in the city of Litchfield, in the State of Illinois, over a public highway over which this defendant had permission to lay its tracks; that all the ties, rails, and other material of which this track was constructed were afterwards and without the knowledge and consent of this defendant unlawfully and by sundry evil-disposed persons torn up and converted to their own use, and that this defendant is now endeavoring by appropriate legal remedies to recover damages for such unlawful conversion; that *this* two miles of track extended along said street north from the right of way of the Indianapolis & St. Louis railroad right of way, and the license therefor was afterwards revoked for cause by said city and given to another railroad company.

This defendant admits that said fifty bonds were certified and issued and delivered as stated by said Central Trust Company to the Empire Construction Company as stated; but avers that the same were in payment of said two miles of track as aforesaid, and that this was all the right of way, road-bed, grading, bridging, or track ever at any time acquired by this defendant or to which it had any right, and is the only property which ever came within the terms of said deed of trust or mortgage.

54 This defendant denies that any further work was done on or for its said railroad after the certification of said bonds, and denies that the grading and bridging of said railroad was completed over nearly the entire route as aforesaid.

This defendant admits that the Empire Construction Company stopped the said work of construction after the delivery of said bonds, but that this was done for good reasons, as will be duly shown, and by mutual consent.

This defendant denies that the St. Louis & Chicago Railway Company has taken possession of any of this defendant's property.

This defendant denies that the Litchfield & St. Louis Railway Company has taken possession of any of this defendant's property.

This defendant admits that default has been made in the payment of its said bonds and coupons as stated and that it is insolvent, but

denies that any of its property is in the possession of any of the defendants herein, as charged.

As to all matters of the bill of complaint contained not hereinbefore specifically admitted or denied this defendant is not informed except by said bill of complaint, and therefore can neither admit nor deny the truth of the allegations in that regard in said bill of complaint contained, and in reference to such matters this defendant leaves the said complainants to make such proof as they may be advised.

Without this, that no other matter or thing in the said bill of complaint contained and material and necessary for this defendant to make answer unto and not herein or hereby well and sufficiently answered, confessed or averred, traversed or denied, is true to the knowledge or belief of this defendant; all of which matters
55 and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays that it may be dismissed hence with all reasonable costs and charges in its behalf most wrongfully sustained.

CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD COMPANY.

CONKLING & GROUT, *Counsel.*

(Endorsed:) Filed August 2d, 1887. James T. Jones, clerk.

Afterwards, to wit, on the 8th day of August, in the year last aforesaid, came again the complainants, by Messrs. Brown, Wheeler & Brown and Hough, Overall & Judson, their solicitors, and filed in the clerk's office of said court their several replications to the answers of the Mercantile Trust Company, the St. Louis & Chicago Railway Company, the Litchfield & St. Louis Railway Company, and the Chicago, Springfield & St. Louis Railroad Company; which said replications are as follows, to wit:

Replication to Answer of Mercantile Trust Co.

United States Circuit Court, Southern District of Illinois.

BELLE N. B. WADE and WARNER M. HOPKINS
vs.
THE CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD Co. *et al.* } In Chancery.

56 The replication of Belle N. B. Wade and Warner M. Hopkins, complainants, to the separate answer of the Mercantile Trust Company.

These repliants, saving and reserving to themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereunto say that they will aver, maintain, and prove their bill of complaint

to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

BROWN, WHEELER & BROWN,
HOUGH, OVERALL & JUDSON,
Solicitors for Complainants and Counsel.

(Endorsed:) Filed Aug. 8th, 1887. James T. Jones, clerk.

57 *Replication to Answer of St. Louis & Chicago R'y Co.*

United States Circuit Court, Southern District of Illinois.

BELLE N. B. WADE and WARNER M. HOPKINS
vs.
THE CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD Co. *et al.* } In Chancery.

The replication of Belle N. B. Wade and Warner M. Hopkins, complainants, to the separate answer of the St. Louis & Chicago R'y Co.

These repliants, saving and reserving to themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereunto say that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

BROWN, WHEELER & BROWN,
HOUGH, OVERALL & JUDSON,
Solicitors for Complainants and Counsel.

(Endorsed:) Filed Aug. 8th, 1887. James T. Jones, clerk.

58 *Replication to Answer of Litchfield & St. Louis R'y Co.*

United States Circuit Court, Southern District of Illinois.

BELLE N. B. WADE and WARNER M. HOPKINS
vs.
THE CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD Co. *et al.* } In Chancery.

The replication of Belle N. B. Wade and Warner M. Hopkins, complainants, to the separate answer of the Litchfield & St. Louis Railway Company.

These repliants, saving and reserving to themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of said answer of the said defendant, for replication thereunto say that they will *answer*, maintain, and prove their bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law, to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

BROWN, WHEELER & BROWN,
HOUGH, OVERALL & JUDSON,
Solicitors for Complainants and of Counsel.

(Endorsed:) Filed Aug. 8th, 1887. James T. Jones, clerk.

59 *Replication to Answer of Chicago, Springfield & St. Louis R. R. Co.*

United States Circuit Court, Southern District of Illinois.

BELLE N. B. WADE and WARNER M. HOPKINS
vs.
THE CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD Co. *et al.* } In Chancery.

The replication of Belle N. B. Wade and Warner M. Hopkins, complainants, to the answer of The Chicago, Springfield & St. Louis Railroad Company, one of the defendants.

These repliants, saving and reserving unto themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may — had or taken to the manifold insufficiencies of the said answer, for replication thereunto say that they

will aver, maintain, and prove their said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in said answer contained material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants — and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

BROWN, WHEELER & BROWN,
HOUGH, OVERALL & JUDSON,
Solicitors and of Counsel.

(Endorsed:) Filed Aug. 8th, 1887. James T. Jones, clerk.

60 Then, afterwards, to wit, on the 8th day of Nov., in the June term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of *verdict*, to wit:

Order Extending Time to Take Testimony.

BELLE N. B. WADE *et al.*
vs.
CHICAGO, SPRINGFIELD & ST. LOUIS R. R. CO. *et al.* } In Chancery.

On the application of the complainant- the time for the taking of testimony on the part of the complainant- is hereby extended ninety days from this date.

Afterwards, to wit, on the 4th day of January, in the January term of said court, in the year of our Lord one thousand eight hundred and eighty-eight, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order Appointing L. L. Walbridge Special Master.

BELLE N. B. WADE *et al.*, Assignees, &c.,
vs.
CHICAGO, SPRINGFIELD & ST. LOUIS R. R. *et al.* }

And now, on this 4th day of January, A. D. 1888, come the complainants, by Brown, Wheeler & Brown, their solicitors, and the defendants, by Clinton L. Conklin, Esq., their attorney, and by agreement Mr. L. L. Walbridge is hereby appointed special master and authorized to proceed to take the testimony of such witnesses as may be produced by the complainants on the 12th day of January inst. at the office of Southworth & Atterbury, in Litchfield, Mont-

gomery Co., Ill., beginning at 9 o'clock a. m., and also to proceed on the 13th day of January inst. to take the testimony of such witnesses as may be produced by the complainants at St. Elmo, in Fayette county, Ill., beginning at 9 o'clock a. m.

That he take such testimony in accordance with the laws of the State of Illinois, and that he certify and return the same
61 under seal to the clerk of this court without unnecessary delay.

Then, afterwards, to wit, on the 17th day of February, in the January term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit.

Order Appointing Volney Hickox Special Master.

BELLE N. B. WADE *et al.*
vs.
CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD COMPANY *et al.* } In Chancery.

And now, it having been agreed between counsel that certain depositions in said entitled cause shall be taken upon Wednesday, the 22nd day of February, A. D. 1888, Volney Hickox is hereby appointed special master to take and report to this court the testimony which may come before him at that time under this agreement.

Then, afterwards, to wit, on the 28th day of May, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order Extending Time for Compl'ts' Testimony.

BELLE N. B. WADE *et al.*
vs.
CHICAGO, SPRINGFIELD & ST. LOUIS R. R. Co *et al.* } In Chancery.

This 28th day of May, 1888, the counsel for complainants and defendants appearing by Messrs. Brown, Wheeler & Brown and Conkling & Grout and consenting to the same, the time for complainants to take testimony in above-entitled cause is extended to the 1st day July, A. D. 1888.

62 *Order Appointing L. L. Walbridge Special Master.*

BELLE N. B. WADE *et al.*
vs.
CHICAGO, SPRINGFIELD & ST. LOUIS R. R. Co. *et al.* } In Chancery.

And now, on this 28th day of May, come the complainants, by Brown, Wheeler & Brown, their solicitors, and, on their motion, L.

L. Walbridge, or, in case of his inability to act, any other notary public in said city, is hereby appointed special master and examiner and authorized to take the testimony of Belle N. B. Wade, Warner M. Hopkins, and such other witnesses as may be produced at the office of Hough, Overall & Judson, 417 Olive St., in the city of St. Louis and State of Missouri, beginning at 10 o'clock of the forenoon on the 12th day of June, A. D. 1888, and continuing from day to day thereafter until completed; that ten days' previous notice of such examination and taking of testimony be given the defendants' attorneys herein, and that said examiner take said depositions in accordance with the laws of the State of Illinois, and that he certify and return the same under seal cover to the clerk of this court.

Then, afterwards, to wit, on the 1st day of June, in the year last aforesaid, came the parties, by their solicitors, and filed in the clerk's office of said court their stipulation as to the hearing of testimony; which stipulation is as follows, to wit:

Stipulation as to Hearing Testimony.

UNITED STATES OF AMERICA, } *ss:*
Southern District of Illinois, }

In the Circuit Court of the United States, Southern District of Illinois.

63 BELLE N. B. WADE *et al.*, Plaintiffs,
vs.
CHICAGO, SPRINGFIELD & ST. LOUIS R. R. Co., ST. LOUIS & CHICAGO Railway Co., Litchfield & St. Louis Railway Co., Mercantile Trust Co. of New York, Central Trust Co. of New York, Defendants.

It is hereby stipulated and agreed by and between the parties hereto that the testimony heretofore taken in this cause on behalf of the complainant- at Litchfield, Illinois, on the 12th day of January, 1888, before L. L. Walbridge, special examiner, and on the 22nd day of January, 1888, at Springfield, before Volney Hickox, special examiner, may be read in evidence on the hearing of this cause against The Mercantile Trust Company, defendant in this cause, to the same extent and with the same effect as if said Mercantile Trust Company had received notice of the appointment of said special examiner and of the taking of said testimony on said dates and had been represented thereat, provided, however, that said Mercantile Trust Company shall have the right at the hearing of this cause to make any and all objections to the competency, materiality, or relevancy of all or any part of said testimony which might or could possibly have been made upon the taking of said

testimony had it been present thereat or at any other time and to call for a ruling of the court as to any part of the same.

Dated May 24th, 1888.

HOUGH, OVERALL & JUDSON, WITH
BROWN, WHEELER & BROWN,
Solicitors for Complainants.
ALEXANDER & GREEN,
Solicitors for Mercantile Trust Company, Defendant.

(Endorsed:) Filed June 1st, 1888. James T. Jones, clerk.

64 Now, afterwards, to wit, on the 28th day of November, in the June term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order on Defendants to Close Testimony.

BELLE N. B. WADE *et al.*
vs.
CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD COMPANY *et al.* } In Equity.

And now, on the 28th day of November, A. D. 1888, come the complainants, by Messrs. Brown, Wheeler & Brown, their solicitors, and on their motion it is ordered by the court that the defendants close their evidence in this cause on or before the 1st day of February, A. D. 1889.

Afterwards, to wit, on the 1st day of February, in the year of our Lord one thousand eight hundred and eighty-nine, comes the defendant The Mercantile Trust Company and files its motion, with affidavit in support thereof, for an order extending the rule on defendants to close their testimony; which motion and affidavit are as follows, to wit:

Motion & Affidavit for Order Extending Rule to Close Testimony.

UNITED STATES OF AMERICA, }
Southern District of Illinois. }

In the U. S. Circuit Court, January Term, 1889.

WADE and Others
vs.
ST. LOUIS & CHICAGO RAILWAY CO. and Others. } In Chancery.

And now comes the Mercantile Trust Company, by Alexander & Green and Conkling & Grout, its attorneys, and moves the court to extend the time for the taking of evidence in this case upon the part of the defendants to March 15th, 1889.

CONKLING & GROUT.

65 STATE OF ILLINOIS, }
Sangamon County. }

This affiant on oath says that The St. Louis & Chicago Railway Company, one of the defendants in the case of Wade and others against The St. Louis and Chicago Railway Company, was on or about the 7th day of January, 1889, placed in the hands of a receiver, Robert E. Cavett, by the order of this court.

That this was done under a proceedings brought to foreclose a mortgage or deed of trust given to The Mercantile Trust Company, one of the defendants in the same case, to secure certain bonds therein mentioned.

That the attorneys for the Mercantile Trust Company in said foreclosure proceedings are Alexander & Green, of New York city, together with C. W. Fairbanks, of Indianapolis, Indiana, the latter of whom is also the attorney for the receiver.

That a rule heretofore entered to close the defendants' testimony by Feb. 1st, 1889, was made by agreement with the understanding that if any good reasons should appear why defendants should ask for an extension of the rule they were at liberty to ask for such extension and submit the same for the consideration of the court.

Mr. W. W. Green, of Alexander & Green, whose attention affiant is informed has only recently been called to the case, requests that a rule be entered allowing as late as possible after the first day of March next to take testimony, and affiants states that the defendants still have other and material testimony to introduce.

This affiant further states that by reason of the appointment of said receiver and the bringing of said foreclosure proceedings and the change in the situation in affairs since the entry of said
66 order that it is necessary, in order that justice may be done and the rights of all parties preserved, that further and reasonable time should be given within which to close defendants' testimony.

This affiant says that this application is not made for delay.

Dated this 31st day of January, 1889.

CONKLING & GROUT.

Subscribed and sworn to before me this 31st day of January, 1889.

(Endorsed:) Filed Feb. 1st, 1889. James T. Jones, clerk.

Then, afterwards, to wit, on the 5th day of Feb., in the January term of said court, in the year last aforesaid, the following proceedings were had in said court in said cause and entered of record, to wit:

Order Extending Time to Take Defendants' Testimony.

BELLE N. B. WADE *et al.*
vs.
CHICAGO, SPRINGFIELD & ST. LOUIS RAILWAY COMPANY *et al.* } Chancery.

And come the respective parties, by their solicitors, and the court, having heard the motion by defendants filed herein asking an extension of time within which to close their testimony, orders that the defendants close their testimony March 15th, 1889.

And the court further orders that this cause may be set down for hearing at any time, either at Chicago or Springfield, by the complainants upon their giving notice in writing to the defendants or their attorneys at least ten days before the day so by the complainants designated, such setting to be subject only to the convenience of the court.

67 Then afterwards, to wit, on the 8th day of June, in the year last aforesaid, came the American Loan & Trust Company, by its solicitors, and filed in the clerk's office of said court *and filed* its petition praying leave to intervene in said cause; which said petition is as follows, to wit:

Petition of American Loan & Trust Co.

UNITED STATES OF AMERICA,
Southern District of Illinois.

In the Circuit Court, June Term, 1889.

BELLE N. B. WADE *et al.*
vs.
THE CHICAGO, SPRINGFIELD & ST. LOUIS R. R. CO. *et al.* } Chancery.

To his honor the judge of the circuit court of the United States for the southern district of Illinois, in chancery sitting:

Your petitioner, The American Loan & Trust Company, a corporation organized under the laws of the State of New York and a citizen and resident of said State and having its principal office and place of business in the city of New York, in said State of New York, respectfully represents as follows, to wit:

1st. The petitioner is a corporation duly organized and is fully authorized to accept and enforce the deed of trust hereinafter referred to.

2nd. That since the filing of the original bill of this cause, to wit, on or about the 1st day of April, 1887, — executed and delivered to your petitioner a deed of trust, a copy of which is herewith filed,

marked "Exhibit A," and made part of this petition, and that the property described and conveyed in and by said deed of trust is the same property on which a lien is sought to be enforced in this cause.

3rd. That a large number of bonds have been issued under said deed of trust, and that a large number of the same, to wit,
68 eleven hundred bonds, aggregating one million one hundred thousand dollars, exclusive of interest, are now actually outstanding.

4th. That by reason of the fact above set forth your petitioner is interested in the result of this cause, and it therefore prays leave to intervene and become a defendant therein and file and answer to the bill of complaint, and asks such further relief in the premises as equity may require, etc.

AMERICAN LOAN & TRUST CO.,
By GRANVILLE P. HAWES,
EDGAR M. JOHNSON,
J. H. MATHENY, JR., *Solicitors.*

UNITED STATES OF AMERICA, }
Southern District of Illinois. }

STATE OF ILLINOIS, }
Sangamon County, } *ss:*

J. H. Matheny, Jr., being duly sworn, — oath says that he is one of the solicitors for the American Loan & Trust Company in this behalf, and that the matters and things in the foregoing petition contained are true to the best of his knowledge, information, and belief.

J. H. MATHENY, JR.

Subscribed and sworn to by said J. H. Matheny, Jr., before me this 8th day of June, 1889.

JAMES T. JONES, *Clerk.*

(Endorsed:) Filed June 8th, 1889. James T. Jones, clerk.

Afterwards, to wit, on the 22 day of June of the year last aforesaid, came again the American Loan & Trust Company and
69 filed in the clerk's office of said court its certain other petition to intervene in said cause; which said petition is as follows:

Petition of American Loan & Trust Co.

UNITED STATES OF AMERICA,
Southern District of Illinois.

In the Circuit Court.

BELLE N. B. WADE, WARNER M. HOPKINS
against
THE CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD Company, The St. Louis & Chicago Railway Co., The Litchfield & St. Louis Railway Co., The Mercantile Trust Co. of New York, The Central Trust Company of New York. } In Equity.

To the honorable the judge of the circuit court of the United States for the southern district of Illinois:

Your petitioner, The American Loan & Trust Company, humbly complaining, says unto your honors that on or about April 1st, 1887, the above-named defendant, The St. Louis & Chicago Railway Co., made, executed, and delivered to your petitioner, as trustee, its certain indenture of mortgage, bearing date on that day, and that your petitioner heretofore began an action against the said railway company and other defendants for the purpose of foreclosing said mortgage contained; that such steps have been taken in said action of foreclosure that a decision therein was rendered after trial thereof, at which all the parties were present, by the Hon. Walter Q. Gresham, sitting in equity, in favor of your petitioner, the complainant trustee therein.

Your petitioner further says on information and belief
70 that such steps have been taken in this action that a decision has been rendered on a trial thereof by the Hon. Walter Q. Gresham, sitting in equity, by which decision the plaintiffs herein have been awarded a lien of $20,000 on certain property mentioned in the pleadings and evidence herein; that all the parties to this action were present at the trial thereof, and, in addition, that your petitioner, although not a party to said action, was represented at the trial thereof by counsel and took part in the proceedings on the trial of this action; that the property upon which the complainants herein have been awarded the lien aforesaid is also embraced under the indenture of mortgage aforesaid made by the St. Louis & Chicago Railway Company on or about April 1st, 1887, to your petitioner as trustee.

And now so it is, may it please your honors, that your petitioner will be greatly prejudiced, especially in the event of an appeal as well as in other particulars, unless it is allowed to intervene and be made a party defendant to this action, and that it is without any remedy whatever in the premises unless it can so come into a court of equity where such matters are properly cognizable and unless it can in this way set up and protect its interest in the property upon

which the aforesaid lien has been declared and also be allowed to file an answer and cross-bill.

Wherefore your petitioner prays that this honorable court may be pleased to make an order allowing and permitting your petitioner to intervene in this suit and file an answer and cross-bill protecting its interest in the property as aforesaid; and your petitioner, as in duty bo-nd, will ever pray, etc.

GRANVILLE P. HAWES, *Counsel.*
AMERICAN LOAN & TRUST CO.,
By O. D. BALDWIN, *Pres.*

71 UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF ILLINOIS, } ss:
State, City and County of New York, }

I, Octavius D. Baldwin, being duly sworn, depose and say that I am the president of the American Loan & Trust Company, the petitioner in the foregoing petition; that I have read the petition and know the contents thereof, and that the same is true to my own knowledge except as to those matters therein stated to be alleged upon information and belief, and that as to those matters I believe it to be true.

O. D. BALDWIN.

Sworn to before me this 18th day of June, 1889.
H'Y RENSEN RITCH,
Notary Public (78), *N. Y. County, N. Y.*

UNITED STATES OF AMERICA, }
Southern District of Illinois. }

In the Circuit Court.

BELLE N. B. WADE, WARNER M. HOPKINS
vs.
THE CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD COMPANY. The St. Louis & Chicago Railway Company, The Litchfield & St. Louis Railway Company, The Mercantile Trust Company of New York, The Central Trust Company of New York.

Please take notice that upon the petition of the American Loan & Trust Company, filed in the office of the clerk of the United States court at Springfield, Illinois, on the 22nd day of June, 1889, duly verified on the — day of June, 1889, a copy of which is herewith served upon you, and upon the pleadings and proceedings herein, I shall make a motion before the Hon. Walter Q. Gresham, judge of the circuit court of the United States in and for the
72 seventh circuit, at the United States court-house, in Indianapolis, Ind., at chambers, or at the opening of court on the 2nd day of July, 1889, or as soon thereafter as counsel can be heard, for an order making the American Loan & Trust Company a party

defendant in this suit and granting the said American Loan & Trust Company leave to intervene, file an answer and cross-bill, and for such other and further relief in the premises as may be agreeable to equity.

GRANVILLE P. HAWES,
Solicitor for the American Loan & Trust Co.

Office and P. O. address, 36 Wall St., New York city.

To Messrs. Hough, Overall & Judson and Messrs. Brown, Wheeler & Brown, solicitors for complainants; Messrs. Conkling & Grout, solicitors for def't The Chicago, Springfield & St. Louis Railroad Company; Conkling & Grout, solicitors for def't St. Louis & Chicago Railway Company; Wm. M. Safford, solicitor for def't Litchfield & St. Louis Railway Company; Messrs. Alexander & Green, solicitor- for def't The Mercantile Trust Company; Messrs. Butler, Stillman & Hubbard, solicitors for def't The Central Trust Company.

Endorsed: Filed June 22d, 1889. James T. Jones, clerk.

Afterwards, to wit, on the 3d day of August, in the year last aforesaid, came the parties, by their solicitors, and filed in the clerk's office of said court a copy of the petition of the American Loan & Trust Company, with notice and acceptances of service attached, all of which is as follows, to wit:

73 *Copy of Petition of American Loan & Trust Co. & Acceptance of Service.*

UNITED STATES OF AMERICA,
Southern District of Illinois.

In the Circuit Court.

BELLE N. B. WADE, WARNER M. HOPKINS
vs.
THE CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD Company, The St. Louis & Chicago Railway Company, The Litchfield & St. Louis Railway Company, The Mercantile Trust Company of New York, and The Central Trust Company of New York. } In Chancery.

To the honorable the judges of the circuit court of the United States for the southern district of Illinois:

Your petitioner, The American Loan & Trust Company, humbly complaining, says unto your honors that on or about April 1st, 1887, the above-named defendant, The St. Louis & Chicago Railway Company, made, executed, and delivered to your petitioner, as trustee, its certain indenture of mortgage bearing date on that day, and that your petitioner heretofore began an action against the said railway

company and other defendants for the purpose of foreclosing said mortgage on account of breaches of conditions in the said mortgage contained; that such steps have been taken in said action of foreclosure that a decision therein was rendered after trial thereof, at which all the parties were present, by the Hon. Walter Q. Gresham, sitting in equity, in favor of your petitioner, the complainant trustee therein.

Your petitioner further says on information and belief that such steps have been taken in this action that a decision has been rendered on a trial thereof by the Hon. Walter Q. Gresham,
sitting in equity, by which decision the plaintiffs herein have
74 been awarded a lien of $20,000 on certain property mentioned in the pleadings and evidence herein; that all the parties to this action were present at the trial thereof, and, in addition, that your petitioner, although not a party to said action, was represented at the trial thereof by counsel and took part in the proceedings on the trial of this action; that the property upon which the complainants herein have been awarded the lien aforesaid is also embraced under the indenture of mortgage aforesaid, made by the Chicago & St. Louis Railway Company on or about April 1st, 1887, to your petitioner as trustee.

And now so it is, may it please your honors, that your petitioner will be greatly prejudiced, especially in the event of an appeal, as well as in other particulars, unless it is allowed to intervene and be made a party defendant to this action, and that it is without any remedy whatever in the premises unless it can so come into a court of equity, where such matters are properly cognizable, and unless it can in this way set up and protect its interest in the property upon which the aforesaid lien has been declared, and also be allowed to file an answer and cross-bill.

Wherefore your petitioner prays that this honorable court may be pleased to make an order allowing and permitting your petitioner to intervene in this suit and file an answer and cross-bill protecting its interest in the property as aforesaid; and your petitioner, as in duty bound, will ever pray, etc.

AMERICAN LOAN & TRUST COMPANY,
By O. D. BALDWIN, *Pres.*
GRANVILLE P. HAWES, *Counsel.*

75 UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF NEW YORK, } ss:
State, City, and County of New York, }

I, Octavius D. Baldwin, being *fuly* sworn, depose and say that I am the president of the American Loan & Trust Company, the petitioner in the foregoing petition; that I have read the said petition and know the contents thereof, and that the same is true to my own knowledge except as to those matters therein stated to be alleged upon information and belief, and that as to those matters I believe it to be true.

O. D. BALDWIN.

Sworn to before — this 18th day of June, 1889.

H'Y RESEN RITCH,
Notary Public (78), *N. Y. County, N. Y.*

UNITED STATES OF AMERICA, }
Southern District of Illinois. }

In the Circuit Court.

BELLE N. B. WADE, WARNER M. HOPKINS
vs.
THE CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD COMPANY, The St. Louis & Chicago Railway Company, The Litchfield & St. Louis Railway Company, The Mercantile Trust Company of New York, and The Central Trust Company of New York.

Please take notice that upon the petition of the American Loan & Trust Company, filed in the office of the clerk of the United States court at Springfield, Illinois, on the 22nd day of June, 1889, duly verified on the — day of June, 1889, a copy of which is herewith served upon you, and upon all the pleadings and proceedings herein, I shall make a motion before the Hon. Walter Q. Gresham, judge of the circuit court of the United States in and for the seventh circuit at the United States court-house, in Indianapolis, Ind., at chambers, or at the opening of court on the 22d day of July, 1889, or as soon thereafter as counsel can be heard, for an order making the American Loan & Trust Company a party defendant in this suit and granting the said American Loan & Trust Company leave to intervene, file an answer and cross-bill, and for such other and further relief in the premises as may be agreeable to equity.

76

GRANVILLE P. HAWES,
Solicitor for the American Loan & Trust Company.

Office and P. O. address, 36 Wall St., New York city.

To Messrs. Hough, Overall & Judson and Messrs. Brown, Wheeler & Brown, solicitors for complainants; Messrs. Conkling & Grout, solicitors for def't The Chicago, Springfield & St. Louis Railroad Company; Conkling & Grout, solicitors for def't St. Louis & Chicago Railway Company; Wm. M. Safford, solicitors for def't Litchfield & St. Louis Railway Company; Messrs. Alexander & Green, solicitors for def't The Mercantile Trust Co.; Messrs. Butler, Stillman & Hubbard, solicitors for def't The Central Trust Company.

We hereby acknowledge the receipt of a true copy of the foregoing notice and petition this 22nd day of June, 1889.

BROWN, WHEELER & BROWN*and,*
Sol'rs for Belle N. B. Wade, Waren M. Hopkins.

77 We hereby acknowledge the receipt of a true copy of the foregoing notice and petition this 22nd day of June, 1889.

CONKLING & GROUT,
Sol'rs for Chicago, Sp'f'ld & St. Louis R. R. Co. and St. Louis & Chicago R'y Co.

We hereby acknowledge the receipt of a true copy of the foregoing notice an- petition this 24th day of June, 1889.

Solicitor for def't Litchfield & St. Louis R'y Co.,
W. W. SAFFORD.

Solicitors for def't The Mercantile Trust Company,
ALEXANDER & GREEN.

Solicitors for def't The Central Trust Company—a copy of the within paper has been this day rec'd at this office, Jun- 24, 1889—
BUTLER, STILLMAN & HUBBARD,
New York City.

(Endorsed:) Filed Aug. 3d, 1889. James T. Jones, clerk.

Then, afterwards, to wit, on the said 3d day of August, in the June term of said court and year last aforesaid, the following proceedings were had in said cause, to wit:

Order Making American Loan & Trust Co. Defendant.

BELLE N. B. WADE, WAREN M. HOPKINS
vs.
78 THE CHICAGO, SPRINGFIELD & ST. LOUIS Railroad Company, The St. Louis & Chicago Railway Co., The Litchfield & St. Louis Railway Co., The Mercantile Trust Company of New York, The Central Trust Company of New York. } In Chancery.

This day came the American Loan & Trust Company of New York, by its solicitors, and the complainants, by their solicitors, and the petition of the said American Loan & Trust Company filed on the 22nd day of June, 1889, now coming on to be heard, and it appearing to the court that all the parties to this cause were duly served with copies of said petition on or prior to the 24th day of June, 1889, and that all the said parties were duly notified of the time and place of the hearing of said petition on or prior to the 29 day of July, 1889, and the court being fully advised in the premises, it is ordered by the court that the following order be entered *nunc pro tunc* as of the 6th day of June, 1889, to wit:

It is hereby ordered by the court that the American Loan & Trust Company be, and it is hereby, made a defendant to this cause with all rights of exceptions, appeal, and the prosecution of writs of error, the said American Loan & Trust Company hereby entering its appearance and adopting and accepting the answer of the defendant The Chicago, Springfield & St. Louis Railroad Company as its an-

swer herein and agreeing that the replication to said answer heretofore filed shall stand as the replication to said answer as adopted by said American Loan & Trust Company, and it being further provided that this order shall not make it necessary to retake any of the evidence in this cause or to set aside any interlocutory proceedings or orders heretofore had or entered therein.

79 In the Circuit Court of the United States for the Southern District of Illinois.

BELLE N. B. *Bates et al.*
vs.
CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD CO. *et al.*

Testimony on behalf of the complainant- before L. L. Walbridge, special examiner, appointed by the circuit court of the United States for the southern district of Illinois, taken at the city of Litchfield, State of Illinois, beginning on the 12th day of January, 1888, at the office of Messrs. Atterbury & Southworth.

Present: On behalf of the complainant-, F. N. Hudson, Esq., and J. H. Atterbury, Esq.; on behalf the defendants, C. L. Conkling, Esq.

DUNCAN C. BEST, being duly sworn on behalf of the complainant-, testified as follows:

(By Mr. JUDSON:)

1 Q. State your name and residence.

A. My name is Duncan C. Best. I reside in Hillsboro', Illinois.

2 Q. In what business were you engaged during the latter part of the existence of the Chicago, Springfield & St. Louis Railroad Company?

A. I was clerk—doing clerical work. That was my business at the time.

3 Q. What, if any, work did you do for John J. McLean, secretary of the Chicago, Springfield & St. Louis Railroad Company?

A. I was employed really by Mr. Wing and John J. McLean in conjunction to do certain work in the way of transcribing
80 some contracts and attending to the business, or rather assistant secretary, you might say. Mr. McLean at that time was secretary, when I was working with the road, and I acted in a kind of capacity as assistant secretary. I suppose I had no definite title.

Counsel for the defendant- enters a general objection to this character of testimony.

4 Q. You may state whether or not you ever saw any maps or profiles of the Chicago & Springfield railroad.

A. I did.

5 Q. State whether or not you know the signature of J. H. Atterbury.

A. I do.

6 Q. State whether or not you observed the file-mark of J. H. Atterbury upon the maps and profiles of the Chicago, Springfield & St. Louis railroad.

Counsel for the defendant- objected to the witness testifying as to the contents of papers not produced, and also objected to this evidence on the ground of incompetency.

A. Well, sir, I saw the profiles of the Chicago, Springfield & St. Louis railroad, which was in Mr. McLean's office in Hillsboro', and I also saw the signature of Mr. J. H. Atterbury as secretary, I believe, of that company.

7 Q. What, if anything, did you do with those profiles and maps, and what, af any, file-mark did you put upon them?

A. Well, I filed the profiles with the name of John J. McLean, secretary.

8 Q. What, if anything, was done with the file-mark of the Chicago, Springfield & St. Louis railroad of J. H. Atterbury as secretary?

81 A. It was cut out of the profiles, as I remember it, cut out of the centre of it whenever it was filed. It was cut out entirely.

9 Q. State whether or not the same profiles and maps were filed with the file-mark of the secretary of the St. Louis, Chicago & Springfield Railroad Company.

A. I don't know; that was the company that succeeded. I don't know that. Mr. McLean had nothing to do with that, as far as he was concerned, that I know of. I know nothing about the file-marks—the third file-mark, if there was a third file-mark. I don't know nothing about it.

10 Q. What was the second file-mark?

A. That was the file-mark of John J. McLean as secretary of the Chicago, Springfield & St. Louis, and he succeeded Mr. Atterbury.

Defendants' counsel objected to all the foregoing testimony for incompetency and irrelevancy, and declined to cross-examine the witness.

Signature waived.

JAMES KELLEY, being duly sworn on behalf of the complainant-, testified as follows:

(By Mr. JUDSON:)

1 Q. State your name and residence.

A. My name is James Kelley. I am staying at my father's place, where he formerly lived. It is about seven miles north of Litchfield.

2 Q. Is your father living?

A. No, sir; he is dead.

3 Q. Who was your father?

82 A. Michael Kelley.

4 Q. In what township is your father's place?

A. In Zanesville township.

5 Q. Do you remember the sectional numbers of your father's property in that township?

A. I might trace them out, but if you could refer to the map it would be better.

6 Q. I show you the office atlas map of Montgomery county, Illinois. You can examine that map and state if you can recall the sectional numbers of your father's farm.

A. My judgment would have to be taken from this map?

7 Q. Yes; state to the best of your knowledge.

A. I would have to go by this map to state the numbers of his land. I live in 29 according to this.

8 Q. You mean section 29?

A. Yes. What do you want me to state?

9 Q. To state as near as you can what your father's property was or is.

A. How many acres he owned?

COUNSEL: Yes.

A. He owned 400, I think.

10 Q. In about the location indicated, as well as you can recollect, by this map of Zanesville township which I now show you?

A. Yes, sir. I think this map is correct. That is his property there (indicating).

(Witness is shown illustrated atlas map of Montgomery county, Illinois, for 1874, published by Drake, McCormick & Co.; also the map of Zanesville township therein, page 39, township 10 north, range 5 west.)

83 Counsel for the defendant objects as irrevelant and incompetent.

11 Q. Were you living with your father on this property in the years 1883 and 1884?

A. Before I answer this question am I at liberty to ask a question?

COUNSEL: Yes, sir.

WITNESS: Am I before a judge?

COUNSEL: You are before a United States commissioner, appointed by the United States court at Springfield.

WITNESS: Well, it appears these questions may somewhat concern myself. Am I compelled to answer them?

The COMMISSIONER: You are compelled to answer all questions that may be asked of you relevant to the subject of inquiry except such as may criminate yourself.

12 Q. (Quest. No. 11 repeated.) Were you living with your father on this property in the years 1883 and 1884?

A. I was off and on, I suppose. Sometimes I was away; sometimes I spent my winters in St. Louis; but where I was mostly during the entire part of the year I can't just say, but off and on I was there.

13 Q. When did your father die?

A. He died on the 20th of last July, 1887.

14 Q. Do you know Mr. Benj. F. Johnson, a railroad contractor?

A. I have seen Mr. Johnson, or a man I supposed to be Mr. Johnson, here. I don't know that I would know him to-day if I saw him.

84 15 Q. When was work first done on your father's property on the line of road between Litchfield and Springfield?

A. Do you want the year?

16 Q. Yes; as near as you can give it.

A. I don't know the year.

17 Q. About how long ago was it?

A. I think it was between three and five years ago.

18 Q. By whom was that work done, if you remember?

A. Wilcox and George, I think, were the parties.

19 Q. Was Mr. Johnson in charge of the work or there at all?

A. Well, I can't positively say, but I suppose that these men were working under Mr. Johnson.

20 Q. In which direction was this work done on your father's property, was it on the line running north and south or east and west?

A. On the line running north and south.

21 Q. How much work was done at that time, as well as you can recollect, and what kind of work?

A. You mean what it was worth?

22 Q. No; but was it grading or what?

A. There was grading done there; yes, sir.

23 Q. For what distance was grading done—that is, running north and south; how long a line was it on your father's property?

A. Well, this line runs between my father's land and another man's, but where they entered, whether they entered on the line for this grading over onto my father's side or over onto the other side, I can't positively say, because I did not take any right close,

85 particular notice of it, but I suppose they went somewheres close to the line, I think. I heard they varied a little—that is, they didn't go in on the same line they went out of.

24 Q. How long a distance would that make north and south until it left your father's property?

A. About half a mile.

25 Q. About how high was this grade that was made at that time?

A. Well, I can't tell you exactly.

26 Q. As near as you can from observation, what should you judge from seeing it?

A. Well, it might be right at the steepest part of the dump 27 or 28 feet, but it varies some.

27 Q. Were there any bridges?

A. There is a bridge across there in one place, and then there is another bridge; part of it, I think, is inside of my father's place.

28 Q. Were those bridges built at this time when Wilcox and George were doing the work?

A. No; they have been built since.

29 Q. Were there any ties placed upon the property at that time when Wilcox and George were working for Johnson?

A. I think not.

30 Q. About how wide was this dump that was thrown up for this grade?

A. I can't say, but I would think it would range between ten and twenty feet.

31 Q. Do you remember when the road that is now operated between Litchfield and Springfield was complete?

A. Do I remember when it was complete?

86 32 Q. Yes—that is, you remember the fact of its being completed, don't you?

A. That would depend upon what the term complete would mean. I don't know whether it is complete yet or not.

33 Q. When the rails were laid?

A. I know when they were laying the rails along there.

34 Q. How long after this first completing of the grade were the rails laid?

A. I would think about 3 years.

35 Q. Now, were the rails laid upon the dump or grade that was built there by Wilcox and George?

A. If I can't say positively I would rather not answer at all.

36 Q. I would ask your best recollection whether the rails were laid on the old dump or grade or whether a new dump was built on the grade or property.

A. I think it was laid somewhere close to it. Whether it was made wider or moved a little I can't positively say, but I think it was made right close to it.

37 Q. Isn't it on the same dump or grade, although it may be on a different part of the dump or grade?

A. Well, now, I will tell you. When they were building this dump, both the first time and the last time, I was out in the field at work, and I did not pay right close, particular attention, because it wasn't any of my business. I passed there several times in the week, and I am not prepared to say whether they changed that some or not. Where the centre of the survey lay the first time

87 and where the centre of it lay the last time I can't swear to it at all.

38 Q. No; I don't ask that.

A. (Continuing.) But I know it is not moved any great distance.

39 Q. The question is, Is it not the same dump or grade which was originally thrown up by Wilcox and George and occupied by the track of the present line, whether it is in one part of it or another part?

A. I think the same dump that they threw up has done considerable good towards building the one their track is on, but whether it is right on that line or not I can't say—whether it is on the same line that they threw up.

40 Q. What has become of the old dump that Wilcox and George threw up there?

A. Well, this part of it that was done during this time, a part of it was standing there.

41 Q. Is there anything on that much of it which is there now?

A. Well, I don't know how much of it is there now.

42 Q. Is there anything on what there is of it?

A. I suppose that they have made use of it for this track partly anyhow.

43 Q. Don't you know that they have, Mr. Kelley?

A. Well, if I was speaking generally I would suppose that they had, but I am speaking strictly, and I can't swear whether they have changed it a little or not. Now, that is just the straight of it.

44 Q. Did you attend to business for your father in making a bargain with the old company or with the Empire Construction Company for the right of way?

A. Making a bargain?

88 45 Q. Making a contract?

WITNESS: No, sir; I did not.

Counsel for the defendant renews his objection to all this testimony and specially objects to any evidence in regard to the contract unless the contract is produced.

46 Q. Did you attend to the business of contracting for the right of way if any contract was made for the new company, the St. Louis and Chicago Railroad Company?

A. I don't remember having attended to any business of the kind; but, now, am I at liberty to ask another question?

COUNSEL: Yes.

WITNESS: I have land there myself and the Chicago and St. Louis Railway Company runs through it—that is, I suppose it is the Chicago and St. Louis Railway Company—and, as I said before, unless I am compelled to answer these questions that will implicate myself perhaps hereafter I don't intend to do it.

Mr. CONKLING: If you have land other than this we are talking about through which the Chicago and St. Louis railway was run I wish to say in behalf of that company I do not think that would affect your rights in any way at all, not the slightest.

WITNESS: Suppose I own this land myself now that you are talking about there?

Mr. CONKLING: Whatever the true facts are in the case they will have to come out even if you seek something from the

89 company.

Mr. JUDSON: All I want to know is actual facts in the case.

Mr. CONKLING: Of course if you have rights against our company the mere fact of testifying in answer to these questions will not prejudice you in the slightest.

WITNESS: I don't know where I am or what I am before; I have just come in here.

Mr. JUDSON: You have no interest in this matter and it is a matter of utter indifference to you which side prevails; all we want to get at is the facts. I will ask you, however, if you have any suit in court against the St. Louis and Chicago Railroad Company.

A. In court?

COUNSEL: Yes.

WITNESS: Well, I have what I consider claims.

47 Q. But you mean you have none in litigation?

A. I have none in litigation, but I may have them in litigation if they don't settle with me.

48 Q. Were you ever with your father when he made any agreement or contract, if any such was made, for the right of way over this property with the original company or the Empire Construction Company or the contractors?

A. I don't know who the company is nor who the contractors are of this railroad company; there has been men along there time and again trying to trade with my father, and I have heard him talk with some of them and send some of them away and some of them he wouldn't talk with at all.

49 Q. Were you ever present with your father when Mr. Johnson or Wilcox and George appeared or when Mr. Johnson had any talk with him about the right of way over that property?

A. I don't think that I was.

50 Q. Or when Mr. Southworth made any arrangements or had any talk with your father as to the right of way?

A. That is a question I would rather not answer.

(At this point the examination was suspended to allow the witness to consult an attorney as to his rights as a witness in the premises and whether he would be prejudiced by his testimony in this case.)

(At the expiration of half an hour the witness returned and his examination was continued as follows:)

51 Q. Was there any agreement made between Mr. Southworth and your father in regard to th- right of way?

A. Well, it is a good while ago, and to answer distinctly on these things I can't do it; it is so long ago.

52 Q. What is your best recollection?

A. Yes; I was present when they had some talk.

53 Q. What, if any, agreement was made between them in your presence?

Counsel for the defendant- objected to any testimony concerning any agreement relative to the right of way.

A. Well, if I remember right, I think that my father agreed to let them go through for $325.

54 Q. State whether that agreement was in writing or just a verbal arrangement with them.

A. I suppose it was in writing. I suppose the agreement was as agreed upon and then put in writing.

Counsel for the defendant- renewed his objection to all testimony concerning the agreement unless the agreement in writing was produced.

55 Q. Did you ever see the writing or is that simply your supposition that it was afterwards put in writing?

A. Well, I saw some writing.

56 Q. Do you know whatever became of that writing?

A. I think Mr. Southworth took it with him.

57 Q. Do you remember whether Mr. Southworth had with him a printed blank like this (blank shown to witness) contained in this book which I now show you?

A. No, sir; I don't think he had.

58 Q. Who owns the land just south of you—that is, near to Litchfield—and what place is it?

A. Mr. Rogers owns south of this land that my father owned; Charlie Rogers—I suppose he owns it.

59 Q. Did he have it at the time of the first grading of this railroad?

A. Yes, sir; I think he did.

60 Q. And he has had it ever since?

A. Yes; I suppose he owns it. He is living there.

61 Q. Is it a large tract of land?

A. I think he owns 280 acres; that is my supposition. Of course I don't swear it is his, not from an examination of records, but I think he owns it.

62 Q. Who owns next south of him towards the town?

A. Steve Crawford owns some in there and Squire Parish.

63 Q. And this line of road runs through these places, does it?

A. It runs on the lines. Their farms adjoin along there, and Mr. Schneider owns 40 acres in there on the same section.

92 84 Q. The line of the present railroad, the St. Louis and Chicago, is almost on the section line, ain't it?

A. Half-sectional line.

85 Q. I mean the half-sectional line.

A. Yes, sir; I think it was to be, or at least that was the understanding whe- my father let them go through.

86 Q. Is it a straight north and south line up through your place or does it vary? What do you know about that?

A. You mean the half-section line?

87 Q. Yes; I mean the half-section line. Is it a straight north and south line or not?

A. We thought it was, but still the surveyors said they varied some, I think, from the section line—from the old line along there.

(By Mr. CONKLING:)

88 Q. What do you mean by the old line, the first survey?

A. Yes, sir; the first survey.

89 Q. Then between the first survey and the second survey through this tract of land you have talked about you think there was a slight variation made?

A. There might have been a slight variation, but I think it was aimed to run on the half-section line. I think that was the understanding.

90 Q. But there was a change from the actual line as surveyed between the first and second surveys?

A. I don't know this distinctly, but I think there may be a little variation. They didn't run directly; they entered my father's farm; they entered it off some distance from the country survey
93 and leave it off some distance from the country survey. I don't think they entered it the same distance from the hedge and leave it just the same distance from the hedge.

91 Q. There is a slight variation from the railroad section line?

A. I think so; yes.

(By Mr. JUDSON:)

92 Q. That was the same in the original grading and the present road?

A. That I don't know distinctly, whether it varies some few feet or not; it don't vary a great deal, however, I don't think.

(By Mr. CONKLING:)

93 Q. The two lines, as a matter of face, run along some distance side by side?

A. Do you mean the country survey?

94 Q. No, no, I mean the Chicago, Springfield and St. Louis Railroad Company and the line of the present road as constructed, the St. Louis and Chicago.

A. You wish to know whether the new one run *b*irectly on the line that the old one was worked on.

95 Q. That is not the question. This is the question: Do the lines of the old surveys of the Chicago, Springfield and St. Louis railroad and the line of the road as now operated by the St. Louis and Chicago Railroad Company run side by side for some of the distance?

A. I don't know.

96 Q. Is it not true that for some of the distance they are not identical?

A. Well, speaking strictly, I don't know.

97 Q. Then you can't say whether they are identical or not?

A. No, sir.

(By Mr. JUDSON:)

98 Q. State whether or not -ou mean by that that the present road does not occupy at least a part of the grade that was originally made upon the property by Wilcox & George?
94

Counsel for defendant- objects to the question on the same ground as heretofore.

A. No; I don't mean to say that it don't occupy it.

(By Mr. CONKLING:)

99 Q. When you say "it" do you mean part of the line or the whole of the line?

A. I don't mean to say that this road is in operation now—I don't mean to say that it don't occupy the old work that they done, nor I don't say that it does occupy it without a change. I am not prepared to say. I don't know. I didn't examine these things close enough; they run along there pretty close.

Signature waived.

Counsel for the complainant- offers in evidence certified copies of the articles of incorporation.

First. The articles of the incorporation of the Chicago, Springfield & St. Louis Railroad Company, marked Complainants' Exhibit 1:

EXHIBIT No. 1.

Articles of Incorporation of the Chicago, Springfield & St. Louis Railroad Company.

We, the persons whose names are hereunto subscribed, do by these articles associate ourselves together for the purpose of organizing an incorporated company under and to secure the benefits of the provisio-s of an act of the General Assembly of the State of Illi-
95 nois entitled "An act to provide for the incorporation of associations that may be organized for the purpose of constructing railways, maintaining and operating the same, for prescribing the duties and limiting the powers of such corporations when so organized," approved March 1st, 1872, and all amendments that have been or may hereafter be made to the same, and under the laws of the State of Illinois relating to railroad companies as the same now or may hereafter be.

Article I.

The name of the corporation now to be made and organized is and shall be "The Chicago, Springfield and St. Louis Railroad Company."

Article II.

It is intended to construct the proposed railway of said company at and from the city of Springfield, in the State of Illinois, to the Mississippi river, at the city of East St. Louis, in the said State, with one or more tracks between said places, with the necessary side tracks, depots, yards, machinery, cars, fixtures, structures, appendages, and appurten-ces and upon the most practical line to be selected and chosen by the said company between said places.

Article III.

The place at which shall be established and maintained the principal business office of said corporation shall be in the city of Litchfield, in the county of Montgomery, said State of Illinois.

Article IV.

The corporate existence of said company shall commence upon the fifteenth day of January, A. D. 1883, and continue for the period of fifty years, with power of continuing and renewing such existence according to the statutes in such case made and
96 provided.

Article V.

The amount of the capital stock of said corporation shall be one million dollars.

Article VI.

The names and places of residence of the several persons forming this association for incorporation are as follows:

Names.	Residences.
Elizur Southworth	Litchfield, Illinois.
Henry H. Beach	Litchfield, Illinois.
George N. Black	Springfield, Illinois.
Christopher C. Brown	Springfield, Illinois.
John A. Hunter	St. Louis, Missouri.
William R. Frary	St. Louis, Missouri.

Article VII.

The names of the members of the first board of directors are as follows:

Names.	Residences.
Elizur Southworth	Litchfield, Illinois.
Henry H. Beach	Litchfield, Illinois.
George N. Black	Springfield, Illinois.
Christopher C. Brown	Springfield, Illinois.
John A. Hunter	St. Louis, Missouri.
William R. Frary	St. Louis, Missouri.

And said board shall continue to have six members. The
97 board of directors shall elect for the said company a president and a vice-president from their number, and in the said board and said officers the government of the said corporation and the management of the affairs shall be vested.

The board shall also appoint an executive committee of not less than two of its own number to aid in the management of the affairs of the said company, and also elect for said company one secretary and one treasurer, who need not be members of the board, and appoint a superintendent and such other officers and agents as may be authorized by the stockholders and in such manner as may be provided by the by-laws of said company from time to time.

Article VIII.

The capital stock of said corporation shall be divided into ten thousand shares of one hundred dollars each.

Article IX.

This corporation hereby accepts and adopts all and singular the rights, privileges, and powers now granted to or which may hereafter be conferred upon railroad corporations by the laws of said State and subject to the conditions thereof.

In witness whereof we, the said corporators, have hereunto set our hands and affixed our seals upon the twenty-seventh day of September, A. D. 1882.

98

ELIZUR SOUTHWORTH.	[SEAL.]
HENRY H. BEACH.	[SEAL.]
GEORGE N. BLACK.	[SEAL.]
CHRISTOPHER C. BROWN.	[SEAL.]
JOHN A. HUNTER.	[SEAL.]
WILLIAM R. FRARY.	[SEAL.]

STATE OF MISSOURI, } *ss:*
City of St. Louis, }

I, Charles D. Greene, Jr., a commissioner of deeds for the State of Illinois in Missouri, do hereby certify that John A. Hunter, who is personally known to me as the same whose name is subscribed to the foregoing statement and articles of association, did this day appear before me in person and acknowledged that he had signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal this 27th day of December, 1882.

[SEAL.] C. D. GREENE, JR.,
Commissioner for Illinois at St. Louis, Missouri.

STATE OF ILLINOIS, } *ss:*
County of Sangamon, }

99 I, Edwin A. Wilson, a notary public in and for said county, do hereby certify that Elizur Southworth, George N. Black, and Christopher C. Brown, who are personally known to me as the same whose names are subscribed to the foregoing statement and articles of association, did this day appear before me in person and acknowledge that they had signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth.

Given this 29th day of December, A. D. 1882, and my official seal fixed to the same.

[SEAL.] EDWIN A. WILSON,
Notary Public.

STATE OF ILLINOIS, } *ss:*
Montgomery County, }

I, J. H. Atterbury, a notary public in and for said county, do hereby certify that Henry H. Beach and William R. Frary, who are personally known to me as the same whose names are subscribed to

the foregoing statement and articles of association, did this day appear before me in person and acknowledged that they had signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal this Jan. 2nd, 1883.

[SEAL.] J. H. ATTERBURY,
Notary Public.

STATE OF ILLINOIS, } ss:
Montgomery County, }

100 I, Jno. J. McLean, clerk of the circuit court and *ex officio* recorder within and for said county, in the State aforesaid, do hereby certify that this instrument was filed for record in my office the 2nd day of January, A. D. 1883, at the hour of 12 o'clock m., and duly recorded in Book 2 of Miscellaneous, on page 556.

[SEAL.] JNO. J. McLEAN, *Clerk.*

STATE OF ILLINOIS, } ss:
St. Clair County, }

This instrument was filed for record this 3rd day of Jan., A. D. 1883, at 1.30 o'clock p. m., and recorded in Book 170, page 16.

J. A. WILLOUGHBY, *Recorder.*

STATE OF ILLINOIS, } ss:
Madison County, }

I hereby certify that this instrument was this 5th day of January, 1883, at 1.20 o'clock p. m., filed for record and duly recorded in said county in Book 125, Miscl. Record, page 55, &c.

WILLIAM DAECH,
Clerk Circ. Court & ex Officio Recorder,
By H. B. LITTLE, *Dep'ty.*

STATE OF ILLINOIS, } ss:
Macoupin County, }

Filed and duly recorded in my office January 15th, A. D. 1883, at 8 o'clock a. m., in Book D. K., at page 117, &c.

THOS. R. McKEE, *Clerk, &c.*

101 STATE OF ILLINOIS, } ss:
Sangamon County, }

Filed for record at 9 o'clock a. m., Jan'y 17th, 1883, and recorded in Book No. 70 of Mortg's, page —.

E. R. ROBERTS,
Clerk and ex Officio Recorder.

Filed for record in the office of the secretary of state of Illinois Jan'y 17th, 1883, at 9 o'clock a. m., and recorded.

HENRY D. DEMENT,
Sec'y of State.

UNITED STATES OF AMERICA, } ss:
State of Illinois, }

OFFICE OF SECRETARY.

I, Henry D. Dement, secretary of state of the State of Illinois, do hereby certify that the foregoing is a true copy of articles of incorporation of the Chicago, Springfield and St. Louis Railroad Company.

Filed for record in this office January 17th, 1883, and duly recorded in Book 5, at page 336, of railroad records.

In witness whereof I herero set my hand and affix the
[SEAL.] great seal of State, at the city of Springfield, this 4th day of October, A. D. 1886.

HENRY D. DEMENT,
Secretary of State.

102 (EXHIBIT NO. 2.)

Articles of Incorporation of the St. Louis & Chicago Railway Company.

First. The name of this corporation shall be "The St. Louis and Chicago Railway Company."

Second. It is proposed to construct the said railway from Litchfield, in the county of Montgomery and the State of Illinois, to Springfield, in the county of Sangamon and State of Illinois.

Third. The principal business office of this corporation shall be established at Litchfield, Montgomery county, State of Illinois.

Fourth. The time of the commencement of this corporation shall be May 1st, A. D. 1885, and to continue in force for fifty years.

Fifth. The amount of the capital stock of this corporation shall be one million dollars.

Sixth. The names and places of residence of the several persons forming this corporation are:

Names.	Residence.
Henry H. Beach	Litchfield, Illinois.
John A. Hunter	St. Louis, Missouri.
John J. McLean	Hillsboro', Illinois.
Lewis H. Thomas	Virden, Illinois.
D. L. Wing	Charleston, Illinois.

Seventh. The names of the first board of directors are Henry H. Beach, John A. Hunter, John J. McLean, Lewis H. Thomas, and D. L. Wing.

103 And the government of this corporation shall be vested in the board of directors and such officers and agents as — shall elect.

Eighth. The capital stock of this corporation shall be divided into ten thousand shares of the value of one hundred dollars each.

In witness whereof we have hereunto severally subscribed our names this 14th day of May, A. D. 1865.

HENRY H. BEACH. [SEAL.]
JOHN A. HUNTER. [SEAL.]
JOHN J. McLEAN. [SEAL.]
LEWIS H. THOMAS. [SEAL.]
D. L. WING. [SEAL.]

STATE OF ILLINOIS, *Sangamon County,* } ss:

This instrument was filed for record at 9.35 o'clock a. m. May 18th, 1885, and recorded in Book No. 79 of Mortg's, page 294.

E. R. ROBERTS,
[SEAL.] *Clerk & ex Officio Recorder.*

STATE OF ILLINOIS, *Montgomery County,* } ss:

This instrument was filed for record on the 16th day of May, A. D. 1885, at 8 o'clock a. m., and duly recorded in vol. 3 of Miscellany, page 287.

JOHN J. McLEAN, *Recorder.*

104 UNITED STATES OF AMERICA, *State of Illinois,* } ss:

OFFICE OF SECRETARY.

I, Henry D. Dement, secretary of state of the State of Illinois, do hereby certify that the foregoing is a true copy of articles of incorporation of the St. Louis and Chicago Railway Company.

Filed for record in this office 19th day of May, A. D. 1885, and duly recorded in Book 6, at page 180, of railroad records.

[SEAL.] In witness whereof I hereto set my hand and affix the great seal of State, at the city of Springfield, this 4th day of October, A. D. 1886.

HENRY D. DEMENT,
Secretary of State.

EXHIBIT No. 3.

The Articles of Incorporation of the Litchfield and St. Louis Railway Company.

First. The name of this corporation shall be "The Litchfield and St. Louis Railway Company."

Second. It is proposed to construct the said railway from Litchfield, county of Montgomery, State of Illinois, to a point at or near the town of Alhambra, county of Madison, State of Illinois.

Third. The principal business office of this corporation shall be established and maintained at Charleston, county of Coles,
105 State of Illinois.

Fourth. The time of the commencement of this corporation shall be June first, 1886, and continue in force for fifty years.

Fifth. The amount of the capital stock of this corporation shall be five hundred thousand dollars.

Sixth. The names and places of residence of the several persons forming this corporation are:

Names.	Residence.
Edward S. Orr	Charleston, Illinois.
Henry A. Neal	Charleston, Illinois.
J. M. Alvey	Charleston, Illinois.
H. E. Wilson	Charleston, Illinois.
H. E. Hensley	Charleston, Illinois.

Seventh. The names of the first board of directors are Edward S. Orr, Henry A. Neal, H. Ellison, H. E. Hensley, J. M. Alvey; and the government of this corporation shall be vested in the board of directors.

Eighth. The capital stock of this coporation shall be divided into five thousand shares of the value of one hundred dollars each.

In witness whereof we have hereunto severally subscribed our names this 28th day of May, A. D. 1886.

EDWARD S. ORR.
HENRY A. NEAL.
JAMES M. ALVEY.
HARRY E. WILSON.
HARRY E. HENSLEY.

106 UNITED STATES OF AMERICA, } ss:
State of Illinois, }

OFFICE OF SECRETARY.

I, Henry D. Dement, secretary of state of the State of Illinois, do hereby certify that the foregoing is a true copy of articles of incorporation of the Litchfield and Saint Louis Railway Company.

Filed for record in this office 29th day of May, A. D. 1886, and duly recorded in Book 6, at page 237, of railroad records.

In witness whereof I hereto set my hand and affix the
[SEAL.] great seal of State, at the city of Springfield, this 4th day of October, A. D. 1886.

HENRY D. DEMENT,
Secretary of State.

Counsel for the defendant- objects to the same as irrelevant and incompetent.

Counsel for the complainant- next offers in evidence certified copies of the articles of incorporation of the St. Louis & Chicago Railway Company. The same is marked Exhibit No 2.

Counsel for the defendant- objects — the same as heretofore.

Complainants' counsel next offers in evidence certified copy of articles of incorporation of the Litchfield & St. Louis Railway Company, and the same is marked Exhibit 3.

Counsel for the defendant- objects to the same on the same ground as heretofore.

107 W. B. CARTER, being duly sworn on behalf of the complainant-, testified as follows:

(By Mr. JUDSON:)

1 Q. State your name and residence.

A. My name is W. B. Carter; I live in Zanesville township, Montgomery county, State of Illinois.

2 Q. Do you remember in what section of the township your property is, or your residence?

A. 20; I reckon my residence is in 20.

3 Q. Whose property was that before you had it—the Wagner's, was it not?

A. I know it went through the hands of two parties before I got it from Wagner. There was Wagner to Belt and Belt to Moore and Moore to Carter.

4 Q. How long have you had that property?

A. Pretty near seven years.

5 Q. Do you remember when the grade of the road between Litchfield and Springfield was first built through your property?

A. I remember the commencement of it; I never expect to forget it.

6 Q. When was that?

A. I can't state the time, but I remember about.

7 Q. About what time; how long ago?

A. I don't know the day of the year, the month, or the week; that I don't know a thing about.

8 Q. But who were the parties?

A. The first party I met was Johnson and Wilson.

9 Q. Do you mean Benjamin Wilson?

A. I don't know their initials. I know them as Johnson
108 and Wilson, etc. I don't know their given names.

10 Q. How much work did they do on the property at that time?

A. They graded up, I expect, a mile or perhaps—well, they graded up some half a mile on my place and on Kelley's, and then there was some other property, I think, they graded up. I think that is all the work they done in that settlement at that time.

11 Q. How much was this grading—how high do you think it was?

A. It was not much of a grade on my place, but on Kelley's it was considerable of a grade.

12 Q. Then Kelley was south or north of you?

A. South, due south.

13 Q. Was the Kelley property the property of the father of this young man who has been testifying?

A. Yes, sir.

14 Q. The work on your place was a continuation of the work on Kelley's place, was it?

A. Yes, sir.

15 Q. About how wide was this grade made on your property?

A. I can't say. It was prepared for a road-bed for one track; what

you would term that. I don't know the width of it exactly. The ties—if I could tell you the length of them I could tell pretty near the grade.

16 Q. Eight feet is the length of ties?

A. Well, the grade was, I expect, 12 to 13 feet, I would suppose, on top.

17 Q. Did you make the arrangement for the right of way?

A. You want to prove by me that I made a conveyance of some of this property? Well, just get at that as soon as you can?

109 18 Q. All right; did you make any contract for this right of way? And, if so, with whom?

A. I have had so many men pressing these things on me regarding a conveyance, and, they agreeing to do so much. I commenced with Johnson and he didn't come up with the funds or anything of the kind. I proposed now to give him this right of way if they would agree to do what they agreed to do, but they didn't do that. Finally, if I have given a right of way, I would like to see where I have made it. I would like to see a signature of mine where I have done this.

19 Q. Now, Mr. Carter, how long after this first grade was made before the track was laid?

A. I can't tell.

20 Q. As near as you can remember?

A. It may be a year or three. I don't know how long. It was some time.

21 Q. Was the track laid on the same grade?

A. About, I think. Well, no; the first survey, as I understood it, was on this half-section line, and in grading this first grading and survey they removed our partition fence between me and my neighbors as far as they went. Well, my neighbors would have been required to give a part of this road-bed, and this last company made a change there and didn't touch this fence at all, and it is there standing now, what they left, though they veered round to the west.

22 Q. How much?

A. I don't know. I have no way of knowing, for I didn't suppose I would be called on. I did no more about it, as I was

110 beat out of mine, but I must tell you now as long as you have got me here——

23 Q. Well, tell the whole story.

A. Yes; I will tell it.

24 Q. The question is, what I wish to know particularly, was the track, when it was laid, laid on any part of the old grade?

A. Of the old grade?

COUNSEL: Yes.

A. I think so.

25 Q. But you think it veered a little to the west?

A. Well, I am aware that it does.

26 Q. Were there any bridges on your property in the original grade?

A. No bridges built at that time that I know of.

27 Q. Any ties on the property?
A. No; nothing but this pile of dirt.
28 Q. Did you make any deed for the property to the new company?
A. We had an understanding that I was to make a conveyance for a consideration—a certain consideration—and to-day I don't know what this contract was; I know the consideration I never got, and I consider if there was a contract it was obtained through fraud.

(By Mr. CONKLING:)

29 Q. Was that in writing?
A. Yes, sir.

Counsel for the defendant- objected to this testimony unless the writing is produced.

30 Q. Who did you make a contract with?
A. Mr. Southworth.
111 31 Q. Did you make any contract with Mr. Wing?
A. No, sir.

Cross-examination by Mr. CONKLING:

32 X Q. I understand that the original and grade as made by the Chicago, Springfield & St. Louis railroad, the first company, was on the dividing line between yourself and your neighbor.
A. Yes, sir.
33 X Q. And they removed the partition fence on such portion of the half mile as they did their work and left the partition fence standing on the other parts of the line. Is that correct?
A. Yes, sir.
34 X Q. I understand you further to say that the last company, the St. Louis & Chicago Company, didn't lay their track along over the same line?
A. As they advanced further north they changed their location.
35 X Q. And put it on a grade of their own, did they?
A. The grade?
36 X Q. Or a line of their own?
A. Yes; the line. Well, I said they veered, changed to the west. I wouldn't have known anything about the change if I hadn't saw where they commenced to move this fence. This was in the first company, and they would have run plumb through that fence as they extended north and went east of this line, and the last company ran west of this line altogether all through. This is up to our farmes. There is where I say this change was made.

112 (By Mr. JUDSON:)

37 X Q. But that change didn't take the track off the grade, did it?
A. Not on my premises it did not.

you would term that. I don't know the width of it exactly. The ties—if I could tell you the length of them I could tell pretty near the grade.

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112 (By Mr. JUDSON:)

37 X Q. But that change didn't take the track off the grade, did it?
A. Not on my premises it did not.

(By Mr. CONKLING:)

38 X Q. Didn't the new company make some new grading?

A. Not on my farm; I don't think they did on my farm.

39 X Q. How, then, could the original grading be right on the partition line about 12 feet wide and then the eight-feet ties be laid west of the center of that and yet have something to hold up the west ends of them?

A. I didn't say they were laid. You misunderstood me or misrepresent what I have said.

40 X Q. Now state it in your own way. I wish to get at the fact.

A. I said as they continued north, my next neighbor, St. Clair, north of me, in place of going through this fence they went west of it. Now, whether they made a winding in that road or not I don't know.

41 X Q. How far west, probably of the center line did they go—the partition lines between the places?

A. I don't know how to explain that to you satisfactorily. I am desirous of doing so.

42 X Q. I know that. They went decidedly west, didn't they, so as to clear the line?

A. You can hardly descern if there was much of a curve in the road.

43 X Q. But the property you are now speaking of was on a different line from what it was originally. That is a fact, if it not?

113 A. In grading through my farm they graded over both sides of this road; the road runs north and south. They graded from the east and west, what little grading was to be done, and as they advanced further north there was more of a grade or more of a fill, rather, and the dirt was taken from the west side of the road on there—through there perhaps for half a mile on the east side of the road—and there was then a dividing fence between these farms that we supposed was the half-section line, but they left that standing and consequently this road must have made a veer around to the west, mustn't it?

(By Mr. JUDSON:)

44 X Q. And all this was north of you?

A. Yes, sir.

45 X Q. Who owned the property north of you, this place next north?

A. In the days of the first survey it was owned by Fisher; it is owned now by Mr. St. Clair.

46 X Q. Do you know Mr. D. L. Wing, the president of this road, the St. Louis & Chicago?

A. I don't know that I would know him if I saw him. I have seen him a few times, but I can't say that I would recognize him on the street.

48 X Q. Did you ever have any talk with him about the right of way over this property?

A. Not a word.

49 X Q. Or anybody that he sent to you to talk to you about it?

A. Well, I don't know that he sent them. I have had so much talk I don't know who sent them or where they came from.

50 X Q. Have you had any talk with any officers of the
114 St. Louis & Chicago Railway Company in regard to making a deed for the right of way over this property?

A. Well, who are these officers, if I must answer? I don't know who they are.

51 X Q. Any one you know to be an officer—representing himself to be an officer.

A. The men connected with the road from the first time; there was Johnson and Faught and then there was——

52 X Q. Who after that?

A. Why, Mr. Southworth came to me.

53 X Q. Who after that?

A. I don't know of any one.

(By Mr. CONKLING:)

54 X Q. Do you know who they were seeing you for?

A. Mr. Southworth appeared to be the business man of the company.

55 X Q. What company?

A. Why, the Springfield & St. Louis Railroad Company, as I understood it.

Mr. ATTERBURY: I think we can agree that it was the old Springfield & St. Louis Railroad Company in 1883.

56 X Q. It was understood to be as the representative of the Chicago, Springfield & St. Louis Railroad Company that he saw you?

A. Yes, sir.

Signature waived.

115 J. H. ATTERBURY, being duly sworn on behalf of the complainant-, testified as follows:

(By Mr. JUDSON:)

1 Q. What is your business?

A. I am an attorney-at-law.

2 Q. What, if any, official connection have you had with the Chicago & Springfield Railroad Company?

A. I was secretary from its organization in 1883 until April, 1885.

3 Q. Please examine the book entitled "Record of the Chicago, Springfield & St. Louis Railroad Company" and state what it is, if you know.

A. It is a record of the proceedings of the board of directors and stockholders of the Chicago, Springfield & St. Louis Railroad Company.

Counsel for the defendant- objects to this testimony as irrelevant and incompetent.

4 Q. State by whom these entries were made in this book during the period you have named you acted as secretary.

A. By myself, with the exception of the minutes of the meeting of April 22, 1885, which were written in this book by J. J. McLean, my successor.

Cross-examination by Mr. CONKLING:

5 X Q. Mr. Atterbury, are you now secretary of the company?

A. I am not.

6 X Q. Are you, by reason of any official connection with the company, officially in charge of this book?

A. I am not.

7 X Q. Is this book in your hands officially?

116 A. I will state the book was never surrendered by me. After my resignation—I believe I resigned; yes, I know I did—I retained possession of it, hoping I might be paid for services I had rendered, and the book was loaned temporarily to Mr. McLean, my successor, for the purpose of writing the minutes, and I also loaned it to the attorneys for the Springfield & St. Louis Railway Company for the purpose of making records, but I can't say that I retained it by virtue of any office.

Signature waived.

Mr. JUDSON: I now offer in evidence the book referred to, containing the articles of incorporation, by-laws, proceedings, etc.

(It is agreed that an authentic copy of the book referred to may be substituted in place of the original, and the same is marked "Exhibit 4.")

Mr. CONKLING: I object to the introduction of the original record because it does not appear to have come from the proper authority and for general reasons. I object also — the record of the board meeting, being the last one in the book, which appears to be without date; as a matter of fact it was held some time in December, 1886.

Counsel for complainant- next offers in evidence the original contract between the Chicago, Springfield & St. Louis Railroad Company and the Empire Construction Company.

117 EXHIBIT 4.

Record of articles of incorporation, by-laws, and proceedings of the Chicago, Springfield & St. Louis Railroad Company, incorporated under the laws of the State of Illinois.

Articles of Incorporation of the Chicago, Springfield & St. Louis Railroad Company.

We, the persons whose names are hereunto subscribed, do, by these articles, associate ourselves together for the purpose of organ-

izing an incorporated company under and to secure the benefits of the provisions of an act of the General Assembly of the State of Illinois entitled "An act to provide for the incorporation of associations that may be organized for the purpose of *ob*structing railways, maintaining and operating the same, for prescribing and defining the duties and limiting the powers of such corporations when so organized," approved March 1st, 1872, and all amendments that have been or may hereafter be made to the same and under the laws of the State of Illinois relating to railroad companies as the same now are or may hereafter be.

Article I. The name of the corporation now to be made and organized is and shall be "The Chicago, Springfield & St. Louis Railroad Company."

Article II. It is intended to construct the proposed railway of said company at and from the city of Springfield, in the State of Illinois, to the Mississippi river at the city of East St. Louis, in the said State, with one or more tracks between said places, with the necessary side tracks, depots, yards, machinery, cars, fixtures, structures, appendages, and appurtenances, and upon the most practical line to be selected and chosen by the company between said places.

118 Article III. The places at which shall be established and maintained the principal business office of said corporation shall be in the city of Litchfield, in the county of Montgomery, in said State of Illinois.

Article IV. The corporate existence of said company shall commence upon the fifteenth day of January, A. D. 1883, and continue for the period of fifty years, with power of continuing and renewing such existence according to the statute in such case made and provided.

Article V. The amount of capital stock of said corporation shall be one million dollars.

Article VI. The names and places of residence of the several persons forming this association for incorporation are as follows:

Names.	Residences.
Elizur Southworth	Litchfield, Illinois.
Henry H. Beach	Litchfield, Illinois.
George N. Black	Springfield, Illinois.
Christopher C. Brown	Springfield, Illinois.
John A. Hunter	St. Louis, Missouri.
William R. Frary	St. Louis, Missouri.

Article VII. The names of the members of the first board of directors are as follows:

Names.	Residences.
Elizur Southworth	Litchfield, Illinois.
Henry H. Beach	Litchfield, Illinois.
George N. Black	Springfield, Illinois.
Christopher C. Brown	Springfield, Illinois.
119 John A. Hunter	St. Louis, Missouri.
William R. Frary	St. Louis, Missouri.

And said board shall continue to have six members.

The board of directors shall elect for said company a president and a vice-president from their number, and in the said board and said officers the government of said corporation and the management of its affairs shall be vested. The board may also appoint an executive committee of not less than two of its own number to aid in the management of the affairs of the said company, and also elect for said company one secretary and one treasurer, who need not be members of the board, and appoint a superin-dent and such other officers and agents as may be authorized by the stockholders and in such manner as may be provided by the by-laws of said company from time to time.

Article VIII. The capital stock of said corporation shall be divided into ten thousand shares of one hundred dollars each.

Article IX. The corporation hereby accepts and adopts all and singular the rights, privileges, and powers now granted to or which may hereafter be conferred upon railroad corporations by the laws of said State and subject to the conditions thereof.

In witness whereof we, the said corporators, have hereunto set our hands and affixed our seals upon this twenty-seventh day of December, A. D. 1882.

120

ELIZUR SOUTHWORTH.	[SEAL.]
HENRY H. BEACH.	[SEAL.]
GEORGE N. BLACK.	[SEAL.]
CHRISTOPHER C. BROWN.	[SEAL.]
JOHN A. HUNTER.	[SEAL.]
WILLIAM R. FRARY.	[SEAL.]

STATE OF MISSOURI, } *ss:*
City of St. Louis, }

I, Charles D. Greene, Jr., a commissioner of deeds for the State of Illinois in Missouri, do hereby certify that John A. Hunter, who is personally known to me as the same whose name is subscribed to the foregoing statement and articles of association, did this day appear before me in person and acknowledge that he had signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal this 27th day of December, 1882.

[SEAL.] C. D. GREENE, JR.,
Commissioner for Illinois at St. Louis, Missouri.

STATE OF ILLINOIS, } *ss:*
County of Sangamon, }

I, Edwin A. Wilson, a notary public in and for said county, do hereby certify that Elizur Southworth, George N. Black, and
121 Christopher C. Brown, who are personally known to me as the same whose names are subscribed to the foregoing statement and articles of association, did this day appear before me in person and acknowledge that they had signed, sealed, and deliv-

ered the said instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand this 29th day of December, A. D. 1882, and my official seal affixed to the same.

[SEAL.] EDWIN A. WILSON,
Notary Public.

STATE OF ILLINOIS, } ss:
Montgomery County, }

I, J. H. Atterbury, a notary public in and for said county, do hereby certify that Henry H. Beach and William R. Frary, who are personally known to me as the same whose names are subscribed to the foregoing statement and articles of association, did this day appear before me in person and acknowledge that they had signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal this Jan. 2nd, 1883.

[SEAL.] J. H. ATTERBURY,
Notary Public.

STATE OF ILLINOIS, } ss:
Montgomery County, }

122 I, Jno. J. McLean, clerk of the circuit court and *ex officio* recorder within and for said county, in the State aforesaid, do hereby certify that this instrument was filed for record in my office the 2nd day of January, A. D. 1883, at the hour of 12 o'clock m., and duly recorded in Book 2 of Miscellaneous, on page 556.

[SEAL.] JNO. J. McLEAN, *Clerk.*

STATE OF ILLINOIS, } ss:
St. Clair County, }

This instrument was filed for record this 3rd day of January, A. D. 1883, at 1.35 o'clock p. m., and recorded in Book 170, page 16.

J. A. WILLOUGHBY, *Recorder.*

STATE OF ILLINOIS, } ss:
Madison County, }

I hereby certify that this instrument was this 5th day of January, 1883, at 1.20 o'clock p. m., filed for record and duly recorded in said county in Book 125, Miscl. Record, page 55, &c.

WILLIAM DAECH,
Clerk of the Circuit Court and ex Officio Recorder,
By H. B. LITTLE, *Dep'ty.*

STATE OF ILLINOIS, } ss:
Macoupin County, }

123 Filed and duly recorded in my office January 15th, A. D. 1883, at 8 o'clock a. m., in Book D. K., page 117, &c.

THOMAS R. McKEE, *Clerk, &c.*

STATE OF ILLINOIS, } ss:
Sangamon County, }

Filed for record at 9 o'clock a. m. January 17, 1883, and recorded in Book No. 70 of Mortgages, page —.

E. R. ROBERTS,
Clerk & ex officio Rec.

Filed for record in the office of the secretary of state of Illinois January 17th, 1883, at 9.30 o'clock a. m., and recorded in Book 5, page 366.

(Signed) HENRY D. DEMENT,
Secretary of State.

UNITED STATES OF AMERICA, } ss:
State of Illinois, }

OFFICE OF SECRETARY.

I, Henry D. Dement, secretary of state of Illinois, do hereby certify that the foregoing articles of incorporation of the Chicago, Springfield & St. Louis Railroad Company were filed for record in the office of the secretary of state of Illinois on the 17th day of January, A. D. 1883, at 9.30 o'clock a. m., and duly recorded in Book No. 5 of Railroad Records, at page 366, &c.

In witness whereof I have set my hand and affixed the
124 great seal of State, at the city of Springfield, this 17th day of January, A. D. 1883.

[SEAL.] HENRY D. DEMENT,
Secretary of State.

The articles of association having been, as shown above, filed in the proper counties and with the secretary of state, and the secretary of state having transmitted to the first board of directors his certificate, as above set forth, the first board of directors as named in the articles assembled at the office of E. Southworth, Esq., in Litchfield, Illinois, on the 18th day of January, A. D. 1883, and all the members of the board were present, as follows: Elizur Southworth, Henry H. Beach, George N. Black, John A. Hunter, William R. Frary, Christopher C. Brown; and the board proceeded to a temporary organization, as follows:

On motion of C. C. Brown, no one dissenting, E. Southworth was elected president *pro tem.*, and on motion of H. H. Beach, no one dissenting, George N. Black was chosen secretary *pro tem.*

E. Southworth thereupon took the chair, and the secretary assumed his position, and it was resolved that the book should be opened for subscription to the capital stock of the corporation, which having been done each of the members of the board named in the articles as directors for the first year it appeared by the book and the report of the president *pro tem.* had subscribed for at least five shares of said stock and became a stockholder in said
125 company; and thereupon it was unanimously resolved that the board should proceed to permanent organization, subject to the by-laws to be adopted by the stockholders.

Thereupon Elizur Southworth, having been put in nomination by H. H. Beach, was duly and unanimously elected by the board president of the company, and George N. Black, having been put in nomination by C. C. Brown, was unanimously elected vice-president of the company, and said officers thereupon assumed their duties as such officers.

The president, in the chair, called the board to order and announced that the board would proceed to elect a secretary and a treasurer for the company.

Thereupon, on nomination by C. C. Brown, James H. Atterbury was unanimously elected secretary, and on nomination by John A. Hunter H. H. Beach was unanimously elected treasurer.

The president then announced the requirement of law that the board shall classify themselves by lot in such manner that there shall be as nearly as practi-ble three directors in each class, those belonging to the first class to go out of office at the end of one year and those of the second class at the end of two years.

The board thereupon, on motion of C. C. Brown, no one dissenting, proceeded to classify into two classes, the first class to go out of office at the end of one year and the second class at the end of two years, and lots having been cast as required by law the result appeared and was announced by the president as follows:

126 Henry H. Beach, for two years, second class.
Elizur Southworth, for two years, second class.
Christopher C. Brown, for two years, second class.
John A. Hunter, for one year, first class.
William R. Frary, for one year, first class.
George N. Black, for one year, first class.

And thereupon said directors were declared to belong to said several classes and accepted and ratified severally said classification.

The president called attention to the provision of the articles of association for appointment by the board of an executive committee of not less than two of their own number to aid in the management of the affairs of the company.

It was thereupon unanimously resolved that said committee should be constituted of three members until further ordered, and the board then proceeded to choose said committee, and the following members were unanimously chosen and appointed for the executive committee: H. H. Beach, John A. Hunter, and William R. Frary, to serve for one year *and* under the by-laws of the company.

The subscription book was ordered by the board to be continued open for further subscription to the capital stock, and the board took a recess for one hour.

The board assembled at the expiration of the time for recess—present, all the members as before—and the president reported to the board and the subscription book showed the fact to be
127 that all the capital—of the company had been duly subscribed for.

The president announced that the company was in fit condition to proceed with its business of constructing, equipping, and operating a railroad as proposed in the articles of association; that a meet-

ing of the stockholders would be necessary to adopt permanent by-laws for the company and further meetings to authorize the necessary ways and means to carry out the purposes of the organization.

Thereupon the board adjourned, to meet again at the call of the president.

E. SOUTHWORTH, *President.*

GEO. N. BLACK, *Secretary.*
H. H. BEACH.
C. C. BROWN.
W. R. FRARY.
JOHN A. HUNTER.

128 Proceedings of a meeting of the stockholders of the Chicago, Springfield & St. Louis Railroad Company held at Litchfield, Illinois, on the 18th day of January, A. D. 1883, when all the stockholders of the company were present representing all the capital stock of the company and all assenting to said meeting, as shown by their signatures hereunto, and this being the first meeting, and at the time of subscription and for organization.

On motion of C. C. Brown, Mr. E. Southworth was unanimously called upon to preside as chairman of the meeting and took the chair.

The chairman then appointed by unanimous consent George N. Black secretary of the meeting.

The chairman then announced that it appeared from the books of subscription that all the capital stock of the company had been duly subscribed for, and that the subscribers and holders were E. Southworth, George N. Black, Henry H. Beach, Christopher C. Brown, John A. Hunter, William R. Frary.

And that it was in order for the meeting to adopt by-laws for the company.

Thereupon the following were, upon motion of Mr. H. H. Beach, unanimously adopted as the by-laws of the company:

129 *By-Laws.*

I. The board of directors of this corporation shall consist of six (6) members, to be classified, as required by law, into two classes of three (3) members each, to be styled respectively the first class and the second class, those of the first class to go out of office at the end of one year and those of the second class at the end of two years, counting for those now in office from the fifteenth (15) day of January, A. D. 1883, and when their successors are elected; and all vacancies occurring by reason of the expiration of the term shall be filled by election by the stockholders for a term of two (2) years.

All vacancies occurring by death, resignation, or otherwise than by reason of expiration of term shall be filled by the board from among the stockholders of the association to serve until successor is elected at next election.

II. The board of directors shall meet on the call of the president or, in his absence, of the vice-president, or upon the call of any two

members of the board signing a notice in writing if the president or vice-president shall refuse to call the meeting.

Notice in writing of all the meetings of the board shall be given to each member by delivering the same to him in person or sending the same to him by mail to his proper postal address, postpaid, for at least two days before said meeting. The majority of the board shall constitute a quorum for the transaction of business, and all meetings of the board where all the members are present
130 shall be valid without notice.

III. There shall be an annual meeting of the stockholders of this corporation held for the election of directors and such other business as th-n may be properly brought before the meeting upon the first Monday of January in each year at the city of Litchfield, Montgomery county, Illinois, of which meeting the secretary shall give thirty (30) days' notice to each stockholder by notice in writing addressed to him by mail, postpaid, and by thirty (30) days' notice thereof published in some newspaper in the city of Litchfield, Illinois, specifying the time and place of such meeting.

If from any cause at any time it shall happen that the election of directors shall not be made on the day just named herein another meeting of stockholders may be held without delay and within ninety (90) days after the day herein specified for an annual election upon notice in writing and publication given as provided for the annual election.

If the secretary shall fail or refuse to call such extra meeting the same may be called by the president or vice-president, or, if they are absent or refuse to act, by any two of the then acting board of directors.

IV. Meetings of stockholders may be called in the intervals between such annual meetings or extra meetings by the directors or by the stockholders owning not less than one-fourth ($\frac{1}{4}$) of the stock in the manner now provided by statute.

V. At all meetings of the stockholders, annual or other, at which an election of directors shall be had there shall be a chair-
131 man and secretary of the meeting and one inspector of votes.

The votes shall be by ballot.

The chairman and secretary shall cast up the result and the chairman shall announce it to the meeting. All other voting at stockholders' meetings may be by ballot or *viva voce* as the meeting may determine.

VI. All proceedings of meetings of stockholders shall be reported by the chairman and secretary to the board of directors of the corporation and shall be spread at large upon the records of the proceedings of the corporation and signed by the chairman and secretary of the meeting.

A copy of all the by-laws passed at the meeting of stockholders for the purpose of having the same recorded as required by law shall be signed by the chairman and secretary and shall be certified by the secretary of the company under the corporate seal.

VII. The corporate seal of this company shall be made of metal,

and so as to impress upon paper, parchment, or other material the words and figures as follows in circular form :

"Chicago, Springfield & St. Louis R. R. Co., Illinois, 1883," with the figure of a locomotive in the centre.

The seal shall be in the custody of the secretary and shall be used by him to attest all corporate acts of the company when thereunto authorized by the presiding officer of the company.

An impress of the said seal when perfected shall be made upon the record of these by-laws in the book of proceedings of the corporation on a space to be left at this place for the same.

132 VIII. The officers of this corporation shall be a president, a vice-president, a secretary, and a treasurer, and the board of directors may appoint a superintendent and such other agents as it may from time to time find necessary.

The president, vice-president, secretary, and treasurer shall be elected by the board of directors on their first organization after each annual election, and all officers of this company shall hold their offices, severally, until the next succeeding annual election and until their successors are elected, except as herein or by statute otherwise provided.

The president and vice-president shall be elected from members of the board. The secretary and treasurer may be elected from the board or otherwise as the board may determine.

Whenever the board of directors may deem necessary they are hereby also authorized to appoint an executive committee of not less than three (3) of their number to aid in the management and to act in connection with the board or independently as the board may direct.

It shall require a majority of the directors to elect or appoint any officer.

IX. The president shall be the principal executive officer of the company and have the general supervision of its affairs.

He shall manage, either by himself or through the proper subordinate officers and agents of the company, all negotiations with other corporations, companies, or individuals touching the interests of the company; he shall enter into and execute agreements and contracts as authorized by the board of directors or the executive committee.

133 He shall preside at all meetings of the board of directors at which he shall be present, and he shall see that the by-laws, rules, and regulations of the company are faithfully executed.

He shall sign all certificates, bonds, stock, and other papers or documents issued or executed by, for, or on behalf of the company and direct the attestation thereof when necessary, under the seal of the corporation by the secretary. He shall call meetings of the directors when he shall deem it necessary or when requested so to do by two directors.

He shall particularly see that the minutes of the proceedings of the board and of the meetings of the stockholders are duly preserved and recorded and properly signed by the proper persons or officers.

He shall make himself conversant with the laws of the State as to railroad corporations and perform all of the duties and make all of the reports and statements required by law.

X. The vice-president shall, in case of the death, resignation, or inability of the president to act or his absence from the State, perform the duties of the president as to all acts and duties to be performed within the State, and during any period or vacancy in the office of president by death or otherwise and until another president may be elected the vice-president is hereby clothed and invested with all the powers and subjected to all the responsibilities of the president.

XI. The secretary shall attend all the meetings of the board of directors and of the executive committee and keep a record of their proceedings.

He shall also keep a record of the proceedings of all meetings of stockholders as the same may be reported to him by the
134 chairman and secretary of the meeting, and see that the same are duly signed by the proper persons officiating at said stockholders' meetings on the records when made. He shall preserve the records of the corporation and all papers and books appertaining to his office. He shall have the custody of the corporate seal of the company and attest the same by his signature on all documents when used. He shall keep and preserve a stock certificate book and stock transfer book, a book showing the amount of capital stock subscribed and by whom, the names of the owners of stock, the number of shares held by each person and the number by which each of said shares is respectively designated, the amount of stock paid up and by whom, all transfers of said stock, the amount of assets and liabilities, and the names and places of residence of all its officers. He shall have his office at the public office or place of business in this State for the transaction of the business of this corporation, which shall be at Litchfield, Montgomery county.

XII. The treasurer shall qualify upon his election by giving bond in the sum to be fixed by the board of directors, and at no time less than the sum of one hundred thousand dollars ($100,000), conditioned for the faithful performance of his duty to the said corporation as said treasurer or otherwise as may be required in said condition.

He shall safely keep for the use of the corporation all the funds and other assets of the company coming into his hands, and pay out money only upon the order of the president unless otherwise specially ordered by the board of directors or executive committee.

He shall keep regular books of account which shall show
135 clearly and in good book-keeping form all moneys received and paid out by him and all his acts and transactions as treasurer, and make report of the funds in his hands belonging to the company and the state of his accounts therewith when requested by the board of directors, and his said accounts, books, and papers shall at all reasonable hours be subject to inspection by any director

XIII. The secretary and treasurer, as well as any other agents or officers of the company, except president, vice-president, or a director, may be removed from office at any time by a vote of the

board of directors, and this provision shall be taken to be a part of all agreements made with such agents or officers for service.

XIV. The executive committee shall be appointed by the board of directors from among its own members, and vacancies may be filled in said committee by the board as often as the same occur.

It shall be the duty of the executive committee to aid the board in the management and direction of the business and affairs of the company, and to execute from time to time such powers as may be given by the board, and they may act as they shall deem to the best interests of the company in the absence of specific directions.

They shall take a general supevrision of the finances and affairs of the company during the intervals between the meetings of the board of direetors, and shall at all times meet upon call of the president and aid him by their advice, counsel, and acts in the discharge of his duty in conducting the business of the company.

136 The executive committee shall be prepared to report upon request at any meeting of the board.

A majority of the committee shall be a quorum and a majority of the committee shall control in all meetings thereof.

XV. The board of directors is hereby vested with the power to change, amend, or add to these by-laws from time to time as they may see fit, except as to the number of directors, the manner of election, and the mode of filling vacancies.

In case of the adoption of any amendments or additions to the by-laws by the board the same shall be duly certified and recorded as required by law. The corporation reserves the right, however, to rescind this power thus vested at any annual or other meeting of the stockholders.

XVI. A meeting of the stockholders may be held at any time and the proceedings thereof shall be valid as to the said stockholders of said corporation, at which meeting shall be present in person or by proxy all of the stockholders, and the proceedings of which meeting shall be signed by the names of the said stockholders in person or by proxy.

Nothing herein, however, is intended to authorize any meeting of which notice is absolutely required by law to be made in the interests of third persons.

XVII. The certificates for the capital stock shall be issued for such number of shares in each as the subscriber or party entitled thereto may reasonably demand and shall be in the usual form—signed by the president and under the seal of the company

137 attested by the secretary. The stock of the company shall be transferable only upon the books of the company and upon surrender of the previous certificate, if any certificate has then been issued; otherwise on due assignment of the right and notice thereof to the president and secretary. No stock shall be transferable on which any assessment made is unpaid.

It was thereupon, on motion of Mr. H. H. Beach, unanimously resolved that the secretary of this meeting transmit to the secretary of the company a duly certified copy of these by-laws, signed by the

chairman and the secretary, to be spread upon the records of the corporation and to be certified for record as required by law.

The chairman of the meeting thereupon laid before the stockholders the minutes of the first meeting of the board of directors named in the articles of association and which were read to the meeting and which were in the words and figures following:

"The articles of association having been, as shown above, filed in the proper counties and with the secretary of state, and the secretary of state having transmitted to the first board of directors his certificate, as above set forth, the first board of directors named in the articles assembled at the office of E. Southworth, Esq., in Litchfield, Illinois, on the eighteenth day of January, A. D. 1883, and all the members of the board were present as follows:

"Elizur Southworth, Hylry H. Beach, George N. Black, John A. Hunter, William R. Frary, Christopher C. Brown; and the board proceeded to a temporary organization as follows:

"On motion of C. C. Brown, no one dissenting, E. Southworth was elected president *pro tem.*, and on motion of H. H. Beach, no
138 one dissenting, George N. Black was chosen secretary *pro tem.*

"E. Southworth thereupon took the chair, and the secretary assumed his position, and it was resolved that the book should be opened for subscription to the capital stock of the corporation, which having been done each of the members of the board named in the articles as directors for the first year, it appeared by the book and the report of the president *pro tem.*, had subscribed for at least five shares of said stock and became a stockholder in said company; and thereupon it was unanimously resolved that the board should proceed to permanent organization, subject to the by-laws to be adopted by the stockholders.

"Thereupon Elizur Southworth, having been put in nomination by H. H. Beach, was duly and unanimously elected by the board president of the company, and George N. Black, having been put in nomination by C. C. Brown, was unanimously elected vice-president of the company, and said officers thereupon assumed their duties as such officers.

"The president in the chair called the board to order and announced that the board would proceed to elect a secretary and a treasurer for the company. Thereupon, on nomination of C. C. Brown, James H. Atterbury was unanimously elected secretary, and on nomination of John A. Hunter H. H. Beach was unanimously elected treasurer.

"The president then announced the requirement of law that the board shall classify themselves by lot in such manner that there shall be as nearly as practicable three directors in each class, those belonging to the first class to go out of office at the end of one
139 year; those of the second class at the end of two years.

"The board thereupon, on motion of C. C. Brown, no one dissenting, proceeded to classify into two classes, the first class to go out of office at the end of one year and the second class at the end

of two years, and lots having been cast as required by law the result appeared and was announced by the president as follows:

"H. H. Beach, for two years, second class.

"Elizur Southworth, for two years, second class.

"Christopher C. Brown, for two years, second class.

"John A. Hunter, for one year, first class.

"William R. Frary, for one year, first class.

"George N. Black, for one year, first class.

"And thereupon said directors were declared to belong to said several classes and accepted and ratified severally said classification.

"The president called attention to the provision of the articles of association for appointment by the board of an executive committee of not less than two of their own number to aid in the management of the affairs of the company.

"It was thereupon unanimously resolved that said committee should be constituted of three members until further ordered, and the board then proceeded to choose said committee, and the following members were unanimously chosen and appointed for the executive committee: H. H. Beach, John A. Hunter, and William R. Frary, to serve for one year and under the by-laws of the company.

"The subscription book was ordered by the board to be continued open for further subscription to the capital stock, and
140 the board took a recess for one hour.

"The board assembled at the expiration of the time for recess—present, all the members as before—and the president reported to the board and the subscription book showed the fact to be that all the capital stock of the company had been duly subscribed for.

"The president announced that the company was in fit condition to proceed with its business of constructing, equipping, and operating a railroad as proposed in the articles of association; that a meeting of the stockholders would be necessary to adopt permanent by-laws for the company and further meetings to authorize the necessary ways and means to carry out the purposes of the organization.

"Thereupon the board adjourned to meet again at the call of the president.

"E. SOUTHWORTH, *President.*

"GEO. W. BLACK, *Secretary.*"

It was thereupon, on motion of Mr. C. C. Brown, unanimously resolved by the stockholders that the proceedings of the said board, its election of president and vice-president, secretary and treasurer, and appointment of executive committee, its classification, and all other things by it done, be, and the same are now hereby, ratified and confirmed, and that the said board and officers shall be the board and officers of this company for the ensuing year and until the next annual election and their successors are elected and qualified, subject to the provisions of the by-laws of this company.

It was thereupon, on motion of Mr. H. H. Beach, resolved
141 that the board of directors be authorized and requested to proceed without delay to have surveyed the route of the road of the company, establish its depots, secure its right of way, and

energetically carry into effect the purposes of this organization, to estimate the necessary or proper cost of building and equipping the road, to solicit proposals for the construction and equipment, and to enter into contracts if necessary, with such persons, corporations, or companies as they may deem fit and proper for the construction and equipment of the road, and in case it was deemed necessary to borrow money to complete, furnish, improve, or operate the road by issuing bonds of the company and mortgaging its corporate property and franchises as security to call a meeting of the stockholders as required by law and without unnecessary delay, and to inaugurate, make, and do all other acts necessary to carry the objects of this resolution and the purposes of the said corporation into effect.

E. SOUTHWORTH, *Chairman.*

GEO. W. BLACK, *Secretary.*
H. H. BEACH.
C. C. BROWN.
W. R. FRARY.
JOHN A. HUNTER.

142 *Board Meeting.*

EAST ST. LOUIS, ILLS., *Febr'y* 17.

The board of directors convened at East St. Louis, Illinois, this the 17th day of February, A. D. 1883, pursuant to the call of the president and upon one notice given to each director as required by the by-laws, and there were present E. Southworth, H. H. Beach, C. C. Brown, Geo. N. Black, W. R. Frary, and John A. Hunter.

The board was called to order, the president in the chair, whereupon the report of the stockholders' meeting held on the 18th day of January, A. D. 1883, at Litchfield, including the by-laws then adopted, signed by the chairman and secretary of that meeting, was received and ordered to be placed upon the records of the company, and a copy of the by-laws signed by the chairman and secretary of that meeting and duly certified by the secretary of the company filed for record in the several counties of the State through or into which the road of this company is to extend.

On motion of Mr. John A. Hunter, John H. Wilson was unanimously appointed chief engineer of this company and his salary was fixed at two hundred and fifty dollars per month.

The chief engineer reported that he had completed a survey of the proposed route of the company's road and prepared an accurate map thereof. The engineer explained that much of the work had been done by him at the direction of the president in anticipation of his actual appointment, and that he had personally attended to and superintended the work, and that it was in every way
143 a carefully and minutely made and reliable survey, and the map truthfully exhibited the results. The minutes and memoranda of the survey were also laid before the board.

The board thereupon entered upon an examination of the survey, minutes, and map, and after a full discussion of its merits, on motion

of Mr. H. H. Beach, the report of the chief engineer and the survey and map by him were accepted and approved, and it was ordered that the map be signed of this date by the chief engineer and sealed with the corporate seal, attested by the secretary, and filed with the secretary, and placed in the custody of the chief engineer for the time being.

On motion of Mr. C. C. Brown, it was resolved, no one dissenting, that the road of this company was now located and established on and over the route in manner and with the turnouts, side tracks, bridges, depots, water tanks, and turn-tables, and other appurtenances as on the said map this day filed and exhibited, subject, however, to be modified and extended within the limits of the charter on further order of the board.

The president announced that he had received a written proposition from the Empire Construction Company, a corporation of Illinois, to construct, complete, and finish the road of this company, with turnouts, side tracks, bridges, depots, water tanks, and turntables; also to equip the road and to secure for the company its right of way, to be performed entire within three years, in consideration of two million five hundred thousand dollars ($2,500,000.00) in the thirty years bonds of the company at par, and nine
144 hundred and ninety thousand dollars ($990,000.00) in the paid-up and non-assessable stock of the company, and the privilege of operating the parts of the road fit therefor before the final completion of the whole, according to the specification and contract in writing submitted with said proposition and now laid before the board for its consideration.

The proposition and form of agreement were thereupon fully discussed by the board.

Mr. Frary placed before the board his written consent that of the shares subscribed by him nine thousand (9,000) might be issued by the company and disposed of for work and labor to be supplied under proposed agreement of construction, and if at any time said shares were not taken as agreed his subscription would hold good until said shares were in fact really taken; and thereupon Mr. Hunter moved and it was unanimously resolved that the proposition and prepared agreement offered by the Empire Construction Company met with the approval of this board, and that the president was directed and authorized under seal of the company to sign and deliver the same for this company *for this company* at any time within the next following two weeks, and that the offer of Mr. Frary be accepted.

It was thereupon, on motion of Mr. Black, resolved that a meeting of the stockholders of this company shall be convened at the city of Litchfield, Illinois, on the 28th day of April, A. D. 1883, at the hour of eleven a. m., for the purpose of considering and voting upon the question of borrowing such money and obtaining such means as
145 may be necessary for completing, building, improving, and operating said company's railroad; to issue and dispose of its bonds for any amount found necessary, not to exceed two million five hundred thousand dollars, and to mortgage its corporate prop-

erty and franchises to secure the payment of any debt so contracted, and also for considering and voting upon a ratification of contract for the construction, completion, and equipment of said road and any other necessary business that may come before the meeting.

The notice of such meeting shall be signed by the president and secretary, and to be given and published for the time and in the manner required by law.

Thereupon the president announced the proposition of Mr. Delos Aan Deusen to convey to this company all and singular the survey, maps, rights of way, road, minutes, books, papers, and documents, and all other real or personal property sold and conveyed to said Van Deusen by the Springfield and St. Louis Railroad Company by its certain deed dated February 17th, A. D. 1883, and all right, title, and interest in law and in equity had and acquired or that may hereafter — obtainable by said Van Deusen or his assigns, under and by virtue of said conveyance to him as aforesaid, for and in consideration of the sum of ten thousand dollars ($10,000.00), and on motion of Mr. Brown it was unanimously resolved that the president should accept said conveyance and caused to -e paid the consideration of ten thousand dollars ($10,000.00) from the funds and assets of the company.

146 It was thereupon, on motion of Mr. Frary, unanimously resolved that any subscriber to the stock of this company be, and is hereby, authorized to pay in full for any one or more shares by him subscribed for, and that upon such payment certificates for such shares so paid should be issued to him, and the same should be expressed to be fully paid and non-assessable.

E. SOUTHWORTH, *President.*

J. H. ATTERBURY, *Secretary.*

Meeting of Stockholders at Litchfield April 28th, 1883.

At a meeting of the stockholders of the Chicago, Springfield & St. Louis Railroad Company held this the twenty-eighth day of April, A. D. eighteen hundred and eighty-three, at the hour of eleven a. m., there were present all the stockholders of the company and they assented to this meeting, as shown by their signatures to the minutes hereof, and thereupon, — motion of Mr. Brown, Mr. John A. Hunter was called upon to preside over the meeting, no one dissenting, and he took the chair, and the chairman thereupon appointed Mr. George N. Black secretary of the meeting, who assumed the duties of the position.

The chairman thereupon called upon the secretary to read the resolution of the directors calling this meeting and the evidences that it is now held pursuant to said call and the statutes in such case made and provided, and thereupon the secretary read and filed, first, resolution of the board of directors passed at a meeting held at East St. Louis, Illinois, February 17th, 1883, as follows:

147 "Resolved, That a meeting of the stockholders of this company shall be convened at the city of Litchfield, Illinois, on the 28th day of April, A. D. 1883, at the hour of eleven

a. m., for the purpose of considering and voting upon the question of borrowing such money and obtaining such means as may be necessary for completing, building, improving, and operating said company's railroad, to issue and dispos*y* of its bonds for any amount found necessary not to exceed two million five hundred thousand dollars, and to mortgage its corporate property and franchises to secure the payment of any debt so contracted, and also for considering and voting upon a ratification of a contract for the construction, completion, and equipment of said road and any other necessary business that may come before the meeting. The notice of said meeting shall be signed by the president and secretary and be given and published for the time and in the manner required by law."

The secretary then read and filed the affidavit of the secretary of the company that he had served a notice of this meeting personally upon Elizur Southworth and Henry H. Beach at Litchfield, Illinois, severally on the 19th day of February, A. D. 1883, and mailed a copy of said notice, postage prepaid, to Christopher C. Brown and George N. Black at Springfield, Illinois, and to William R. Frary and John A. Hunter at St. Louis, Missouri, severally, all on the 19th day of February, A. D. 1883, and more than sixty days next before the meeting, and which notice was in the words and figures following, to wit:

148 "*Stockholders' Meeting.*

Pursuant to resolution of the board of directors, a meeting of the stockholders of the Chicago, Springfield and St. Louis Railroad Company will be held at Litchfield, Montgomery county, Illinois, on the twenty-eighth (28th) day of April, A. D. 1883, at the hour of eleven a. m., for the purpose of considering and voting upon the question of borrowing such money and obtaining such means as may be necessary for completing, finishing, improving, and operating said company's railroad and issuing and disposing of its bonds for any amount so borrowed or obtained, not to exceed two million five hundred thousand dollars, and to mortgage its corporate property and franchises to secure the payment of any debt so contracted.

Also for considering and voting upon a ratification of a contract for the construction, completion, and equipment of said road, and upon any other necessary business that may come before the meeting.

Dated at Litchfield, Illinois, this 9th day of Februsry, A. D. 1883."

E. SOUTHWORTH, *President.*

J. H. ATTERBURY, *Secretary.*"

The secretary then read to the meeting and filed proofs of the insertion of a notice of the meeting in a newspaper published in each of the counties through which the road of this company runs at least sixty days prior to the day of this meeting, as follows:

For Sangamon county, in the Illinois State Journal.

149 For Montgomery county, in the Litchfield Courier.

For Madison county, in the Edwardsville Republican.

For Macoupin county, in the Carlinville Democrat.

For St. Clair county, in the Belleville Republican.

The first insertion in each of the said papers being on or before February 26th, 1883, as appears by affidavit of the secretary of the company and the certificates of publishers to be filed.

And upon consideration thereof the chairman announced that it appeared by the papers and proofs aforesaid, as well as by the consent of all the stockholders, that this meeting was not being legally held for the purposes in said resolution of the directors and said notice specified and the secretary was ordered, no one dissenting, to file with the secretary of the company the foregoing affidavits, papers, and documents; thereupon the chairman stated it would be first in order to lay before the meeting the contract made by this company pursuant to the resolution of the board, and, as a vote would have to be taken of this and other resolutions coming before the meeting, there should be an inspector of votes.

Thereupon, on motion of Mr. Beach, no one dissenting, J. H. Atterbury was appointed inspector of votes.

Thereupon the secretary read the contract for construction made by this company with the Empire Construction Company, and which is in the words and figures following, to wit:

150 *Contract.*

"These articles of agreement made and entered into this third day of March A. D. 1883, by and between the Empire Construction Company, a corporation of the State of Illinois, party of the first part; and the Chicago, Springfield & St. Louis Railroad Company, a railroad corporation of the same State, party of the second part, witnesseth:

"That for and in consideration of the covenants and payments hereinafter recited to be made by said party of the second part; said party of the first part, hereby for itself its successors and assigns covenants and agrees to furnish all the material and labor necessary to construct, iron, bridge and complete the railroad of said party of the second part, as now surveyed and designated on a map filed in the office of the party of the second part, which railroad commences at a point on the Gilman and Clinton branch of the Illinois Central railroad at the city of Springfield and extends by was of Litchfield and Mount Olive to the bridge junction at East St. Louis, Illinois, a distance of about ninety-eight (98) miles passing through the towns of Pawnee, Litchfield, Mount Olive, Alhambra, Marine, Troy and Collinsville; with four and one-half (4½) miles of side track, (necessary to the places parked on said map for the business of the line at the time of the opening) and to furnish the said railroad with depots, water tanks and turn-tables; and to equip the same with engines and cars as hereinafter provided.

"The road and side tracks hereby agreed to be constructed are those on said map marked and specified only, and said map is hereby referred to for further particulars in this behalf; and the said road and side tracks are to be built in manner and according to
151 the specifications and conditions following: and the bridges,

depots, water tanks, turn-tables, engines and cars are to be those only also hereinafter mentioned in the specifications:

"*Specifications.*

"I. Said railway shall be constructed and completed as nearly as may be practicable over, along and upon the line designated in and upon said survey and map hereinafter referred to; including such switches, side tracks and turnouts, not exceeding four and one-half (4½) miles in all, and which shall be located and constructed to that extent only, and at such places as in and upon said map designated.

"II. Such railway and each and every part thereof, including such switches, side tracks and turnouts, together with all the equipment thereof mentioned, to be constructed, completed and finished in a good, substantial and workmanlike manner, and at such grades and degrees of curvature as are now established and on said map designated, as near as may be practicable."

III. Grading.—All embankments to be completed to a uniform width of fourteen (14) feet at subgrade with side slopes of one and one-half (1½) feet vertical to one foot horizontal. All excavations of earth to be completed to a uniform width of twenty (20) feet at subgrade, with adequate side ditches and side slopes of one and one-half (1½) feet vertical to one foot horizontal. All rock excavations to be completed to a uniform width of fourteen (14) feet at subgrade, with side slopes of one-quarter foot vertical to one foot horizontal.

IV. Bridging.—In all cases where span truss bridges shall be required, ordinary wooden or combination (wood and iron)
152 Howe's truss shall be constructed; the workmanship and materials of which shall be first-class. Such spans or trusses shall rest and be secured at each end upon piling, which shall consist of sound white burr or chestnut oak timber, to be driven to such depths, and so secured and constructed above the surface as to provide substantial and secure bearing of wood for such span or truss. When practicable and expedient and such stone may be had without difficulty, the piers and abutments shall be constructed of first-class stone masonry to be laid in cement.

All tressel-work to be built of good, sound burr or chestnut oak or pine timber, free from decay, the bents of which shall contain two perpendicular and two battered posts with proper top and bottom and subsill, all of which shall be of timber one foot square sawed or well hewn on four sides, except such bottom or subsills, which may be faced on two sides only, including such suitable trusses, stringers and cross-ties (of wood), iron bolts, and washers as may be required.

The distance from centre to centre of joining bents not to be greater than fifteen (15) feet.

V. Cross-ties to be of good white burr or chestnut oak, to be sawed or evenly hewn on two sides, of uniform length of eight feet, not less than six inches thick, with six-inch faces for hewn ties, and

seven-inch faces for sawed ties; to be evenly distributed and put in place at the rate of not less than two thousand six hundred and forty per mile, either on main road or side tracks.

VI. Track-laying.—The track shall be laid to a *guage* of
153 four (4) feet eight and a half or nine inches between the rails; to consist of first quality of "T" rails of steel, weighing not less than sixty pounds per yard, with improved angle-splice bars, properly and substantially secured and spiked, to be laid to proper surface of alignment, and regularity of curvature: the siding, switches and turnouts may be laid with steel "T" rails weighing not less than fifty pounds per yard with ordinary splice bars.

VII. Ballast to consist of sand gravel and such other suitable materials, except stone, as can be conveniently obtained, along the line of said railroad, which shall be evenly distributed and in quantity not exceeding seventeen hundred and sixty (1,760) cubic yards per mile.

VIII. Stations and depots.—Eight first-class stations on said line, and eight second-class stations on said line, shall be built at the places now designated on the said map hereinbefore referred to.

The first-class stations to be built per specifications by engineer, not to exceed in cost twelve hundred dollars ($1,200.00), (passenger and freight combined) each.

The second-class stations to be built per specifications per engineer not to exceed in cost (passenger and freight combined) six hundred dollars ($600.00) each.

Also sixteen section-houses according to direction of — chief engineer, not to exceed a cost of fifty ($50.00) dollars each.

154 IX. Tanks and turn-tables.—There are to be six water tanks and three turn-tables, to be placed at the points designated on said map. The water tanks to be per specification by engineer, not to exceed in cost eleven hundred ($1,100.00) dollars each, and three turn-tables to be as directed *a* by engineer, not to exceed in cost twelve hundred dollars ($1,200.00) each.

X. Equipments to consist of three (3) switch engines; and two (2) passenger engines; six (6) freight engines; four (4) baggage cars; four (4) passenger coaches; two hundred (200) coal cars and one hundred (100) box cars; two (2) combination baggage and passenger coaches; fifty (50) stock cars; and fifty (50) flat cars; two (2) local caboose; four (4) through caboose; sixteen (16) hand cars; two (2) derrick; and two (2) wrecking cars. All of the coal, box and freight cars to be of not less than twenty (20) tons capacity; all of the engines to be of eight wheel-; and all freight engines to be 18 x 24 standard; passenger engines to be of 17 x 24 standard, and all of said equipments to be of first-class material, manufacture, improvement and finish.

Provided, however, that none of said equipments shall be required to be furnished until said railroad shall have been completed for at least the distance of fourteen (14) miles commencing at the city of Litchfield, but may be furnished sooner and in such proportion as the party of the first part may deem fit and proper; and it is further agreed that in addition to the matters hereinbefore specified and to

depots, water tanks, turn-tables, engines and cars are to be those only also hereinafter mentioned in the specifications:

"*Specifications.*

"I. Said railway shall be constructed and completed as nearly as may be practicable over, along and upon the line designated in and upon said survey and map hereinafter referred to; including such switches, side tracks and turnouts, not exceeding four and one-half (4½) miles in all, and which shall be located and constructed to that extent only, and at such places as in and upon said map designated.

"II. Such railway and each and every part thereof, including such switches, side tracks and turnouts, together with all the equipment thereof mentioned, to be constructed, completed and finished in a good, substantial and workmanlike manner, and at such grades and degrees of curvature as are now established and on said map designated, as near as may be practicable."

III. Grading.—All embankments to be completed to a uniform width of fourteen (14) feet at subgrade with side slopes of one and one-half (1½) feet vertical to one foot horizontal. All excavations of earth to be completed to a uniform width of twenty (20) feet at subgrade, with adequate side ditches and side slopes of one and one-half (1½) feet vertical to one foot horizontal. All rock excavations to be completed to a uniform width of fourteen (14) feet at subgrade, with side slopes of one-quarter foot vertical to one foot horizontal.

IV. Bridging.—In all cases where span truss bridges shall be required, ordinary wooden or combination (wood and iron)
152 Howe's truss shall be constructed; the workmanship and materials of which shall be first-class. Such spans or trusses shall rest and be secured at each end upon piling, which shall consist of sound white burr or chestnut oak timber, to be driven to such depths, and so secured and constructed above the surface as to provide substantial and secure bearing of wood for such span or truss. When practicable and expedient and such stone may be had without difficulty, the piers and abutments shall be constructed of first-class stone masonry to be laid in cement.

All tressel-work to be built of good, sound burr or chestnut oak or pine timber, free from decay, the bents of which shall contain two perpendicular and two battered posts with proper top and bottom and subsill, all of which shall be of timber one foot square sawed or well hewn on four sides, except such bottom or subsills, which may be faced on two sides only, including such suitable trusses, stringers and cross-ties (of wood), iron bolts, and washers as may be required.

The distance from centre to centre of joining bents not to be greater than fifteen (15) feet.

V. Cross-ties to be of good white burr or chestnut oak, to be sawed or evenly hewn on two sides, of uniform length of eight feet, not less than six inches thick, with six-inch faces for hewn ties, and

seven-inch faces for sawed ties; to be evenly distributed and put in place at the rate of not less than two thousand six hundred and forty per mile, either on main road or side tracks.

VI. Track-laying.—The track shall be laid to a *guage* of
153 four (4) feet eight and a half or nine inches between the rails; to consist of first quality of "T" rails of steel, weighing not less than sixty pounds per yard, with improved angle-splice bars, properly and substantially secured and spiked, to be laid to proper surface of alignment, and regularity of curvature: the siding, switches and turnouts may be laid with steel "T" rails weighing not less than fifty pounds per yard with ordinary splice bars.

VII. Ballast to consist of sand gravel and such other suitable materials, except stone, as can be conveniently obtained, along the line of said railroad, which shall be evenly distributed and in quantity not exceeding seventeen hundred and sixty (1,760) cubic yards per mile.

VIII. Stations and depots.—Eight first-class stations on said line, and eight second-class stations on said line, shall be built at the places now designated on the said map hereinbefore referred to.

The first-class stations to be built per specifications by engineer, not to exceed in cost twelve hundred dollars ($1,200.00), (passenger and freight combined) each.

The second-class stations to be built per specifications per engineer not to exceed in cost (passenger and freight combined) six hundred dollars ($600.00) each.

Also sixteen section-houses according to direction of — chief engineer, not to exceed a cost of fifty ($50.00) dollars each.

154 IX. Tanks and turn-tables.—There are to be six water tanks and three turn-tables, to be placed at the points designated on said map. The water tanks to be per specification by engineer, not to exceed in cost eleven hundred ($1,100.00) dollars each, and three turn-tables to be as directed *a* by engineer, not to exceed in cost twelve hundred dollars ($1,200.00) each.

X. Equipments to consist of three (3) switch engines; and two (2) passenger engines; six (6) freight engines; four (4) baggage cars; four (4) passenger coaches; two hundred (200) coal cars and one hundred (100) box cars; two (2) combination baggage and passenger coaches; fifty (50) stock cars; and fifty (50) flat cars; two (2) local caboose; four (4) through caboose; sixteen (16) hand cars; two (2) derrick; and two (2) wrecking cars. All of the coal, box and freight cars to be of not less than twenty (20) tons capacity; all of the engines to be of eight wheel-; and all freight engines to be 18 x 24 standard; passenger engines to be of 17 x 24 standard, and all of said equipments to be of first-class material, manufacture, improvement and finish.

Provided, however, that none of said equipments shall be required to be furnished until said railroad shall have been completed for at least the distance of fourteen (14) miles commencing at the city of Litchfield, but may be furnished sooner and in such proportion as the party of the first part may deem fit and proper; and it is further agreed that in addition to the matters hereinbefore specified and to

meet business necessities, the party of the first part will also
155 supply, and furnish as the chief engineer may direct, such filling, side tracks, stores, furniture trucks, lamps, paper and other supplies usual and proper in railroad business, all not to exceed, on estimation to be made, the sum of fifteen thousand ($15,000.00) dollars.

And it is agreed between the parties hereto, that the party of the first part shall have the right to take possession of use, control and employ in the construction and completion of said railway, all the materials and property placed or located or to be placed or located along the line of said road, and now owned or hereafter to be owned by said party of the second part; free of charge and to maintain such possession and use until the full completion of this contract.

Said party of the first part further covenants and agrees to promptly pay all persons performing labor and furnishing material stipulated for or furnishing board to the first party or to subcontractors or persons employed by them or either of them in furnishing materials for or in the construction of said railway, the amounts due them from time to time on such account, and save harmless and fully protect and indemnify the said second party its successors and assigns from all liens which said persons may be entitled to take or perfect upon the property of said second party or any part thereof in virtue of any laws of the State of Illinois in force for that purpose.

Right of way.—Said first party further covenants and agrees to procure, provide and furnish, and have conveyed to or
156 condemned for said second party, and free of charge or expense to said second party all such unprocured rights of way for tracks and depots herein provided for, as may be possible and necessary to fully complete and equip said railway as in and upon said map shown and herein specified, but to this end the said first party shall have the credit and benefit hereunder of all donations and contributions from others of, for or on account of said right of way or depots or pertaining thereto.

Said first party also agrees that it will begin the construction of said railway in sixty (60) days after the date of this contract and fully complete and equip the same as herein provided for, within three years thereafter; and on the final completion of said road as herein agreed for, turn over said railway so finished and equipped to the said party of the second part, his successors or assigns, in good order, ordinary wear and tear excepted.

And for and in consideration of the said premises, and said covenants, promises and agreements by said party of the first part to be performed, said party of the second part herein, covenants promises and agrees to pay to said party of the first part, its successors or assigns, as follows:

In the negotiable bonds of said party of the second part (said railroad company) to be issued as hereinafter provided for (for the whole road, side tracks, depots, equipments, and all hereinbefore agreed for) two million five hundred thousand ($2,500,000.00) dollars, at the par value of said bonds, and nine hundred

and ninety thousand ($990,000.00) dollars in its capital
157 stock at par, by proper certificates therefor paid up and non-assessable in the manner following: That is to say, all of said bonds and stock shall be issued by said company without unnecessary delay, the bonds to be dated as of May 30th, 1883, numbered from one to twenty-five hundred (2500) both inclusive, and each of the denomination of one thousand (1,000.00) dollars payable thirty (30) years after date, in gold with six per cent. per annum interest gold, payable semi-annually on coupons to be attached; both principal and interest payable in the city of New York at the American Exchange National bank, and all secured by a good and sufficient deed of trust and mortgage in good form and duly executed by said company upon all its property, real and personal owned by it or hereafter to be acquired including its franchises of every kind and said bonds and stock shall be delivered and transferable to said first party as follows:

When said bonds and mortgage are executed as herein agreed and certificates of said stock issued, they shall all be delivered and placed in the hands of the Central Trust Company of New York City as trustee irrevocably and with authority and direction unto said trustee to issue and deliver the same as follows:

Whenever the said party of the first part shall have constructed and completed of the said railroad any one mile and shall have received from the chief engineer a certificate that such amount of said road has been completed according to contract, said party of
158 the first part shall be entitled to receive from said trustee, and said trustee shall deliver to said party of the first part, its sukeessors or assigns twenty-five (25) bonds and eighty (80) shares of stock for said mile, and so from time to time and as rapidly as said road may be completed in sections and of one mile each, and engineer's certificate obtained therefor, and presented, said party of the first part, its successors and assigns shall be entitled to receive, and said trustee shall deliver to it an equal number of said bonds, and an equal number of said shares of stock for each section of one mile and upon the completion of the whole road and equipment, and the certificate of the chief engineer that the same has been completed as herein agreed for, said party of the first part shall be entitled to receive, and the said trustee shall deliver to it, its successor or assigns, all the remainder of said bonds and stock, if any, then in the hands of said trustee, and said trustee shall thereupon be fully discharged from any further responsibility under said trusteeship.

It is expressly understood and agreed that said party of the second part shall not increase its capital stock above that which it is now authorized to have, until the expiration of one year after the completion of the road herein specified; and shall not make or issue or sell any other of its bonds than as herein provided for, without consent of said party of the first part.

It is further agreed by and between the parties, that during the construction and until the final completion and equipment of said railway, the party of the first part, its successors or
159 assigns, for the purposes of construction shall have the right

to the full and free possession, use and control of said railway, equipment and property of the party of the second part as constructed, made or furnished under this agreement or otherwise obtained and had, and shall have the further right to use and operate said railway with said equipment and property in the name of the said party of the second part under its franchises necessary thereto for the transportation of persons and property, until the final and ultimate completion and acceptance of said road, without charge therefor by said party of the second part, and to receive and retain as said party of the first part's own, such charges for such transportation as it may from time to time collect or receive to be in anywise entitled to, but subject at all times to the regulation as to said charges and management of said property by the board of directors of said party of the second part, and for which right of use by said first party, whether exercised or not, said party of the first part agrees and binds itself to pay all the interest which may accrue (while said road may be in the course of construction hereunder and no longer) on said bonds aforesaid, which shall have been delivered to said party of the first part, or otherwise issued by said trustee and of the series hereinbefore specified; and also, at its said party of the first part's costs and expense to keep said railroad and equipments and appurtenances in good repair and good condition ordinary wear and tear excepted.

And it is hereby further provided that whenever bonds are delivered to the party of the first part by said trustee, all interest on said bonds so delivered accrued up to the date
160 of delivery shall be credited on the coupons on which the same may have accroed. All coupons maturing, according to their terms, before issue and delivery of any of said bonds by said trustee as hereinabove provided shall be detached and cancelled.

If at any time a change of the route of said road is necessary to be made, it is agreed that the same may be done on certificate of the chief engineer and approval of the president of said construction company, and thereupon all of the terms and conditions of this agreement shall as to said route as modified be the same as is hereinbefore agreed as to said route now specified in said map.

In witness whereof, the party of the first part and the party of the second part, by its respective president and under its separate corporate seal, attested by its secretary, executed these presents in duplicate the day and year first above written.

[Corporate Seal.]

EMPIRE CONSTRUCTION COMPANY.
D. L. WING, *President.*

Attest: C. H. WING, *Secretary.*

[Corporate Seal.]

CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD COMPANY.
E. SOUTHWORTH, *President.*

Attest: J. H. ATTERBURY, *Secretary.*

Copy filed this 17th of February, A. D. 1883.
J. H. ATTERBURY, *Sec.*

161 And the same having been duly considered by the meeting, Mr. Southworth offered the following resolution, and moved its adoption which was seconded by Mr. Brown:

Resolved that this meeting having heard read and duly considered the contract for construction and equipment of the road of this company made by and between this company and the Empire Construction Company, under their respective corporate seals and signed by their respective presidents and secretaries, does hereby now ratify and confirm the said contract and agreement in all its particulars, and declare the same the legal and binding agreement of this company according to the terms thereof. Thereupon the stockholders proceeded to vote upon said resoluti-n and deposited their ballots with the inspector of votes, who counted the same in the presence of the chairman, and the result being ascertained, the same was and was announced by the chairman to be as follows:

Aye ten thousand shares.

Nay none.

And so said resolution was and was declared to be unanimously adopted.

Thereupon the chairman announced that in view of the contract for construction, it would be in order for the meeting to consider the question of borrowing money and providing the ways and means to carry said contract into effect, and to meet the other needs of the business of the corporation. Thereupon Mr. Black moved the adoption of the following resolution which was seconded by Mr. Southworth:

162 Resolved that in order to complete, finish, improve and operate the railroad of this company, and to obtain the money and means therefor, it is necessary for this corporation to issue and dispose of its bonds in the sum of two million and five hundred thousand dollars and to mortgage its corporate property and franchises to secure the payment of said debt so contracted and that the board of directors of this company is therefore legally authorized and directed, by the proper officers and in good legal form to execute and to issue and dispose of its bonds for the aggregate face value of two million and five hundred thousand dollars. Said bonds shall bear date May 1st, 1883, and they shall be each of the denomination of one thousand dollars, and they shall be numbered consecutively from one (1) to twenty-five hundred (2500) both inclusive; the principal shall be payable thirty years after the date thereof at the American Exchange National bank in the city of New York, to the Central Trust Company of New York, or bearer, in gold, of present standard value and shall bear interest from date of the bond at the rate of six per centum per annum, payable to bearer at said bank semi-annually, in gold, on presentation and surrender for registration of the same by the holder at any time.

And that said board of directors is further authorized, empowered and directed, by the proper officers and in good and sufficient form

to mortgage, all and singular the corporate property, real and personal, and all the franchises of this corporation, now owned or hereafter to be owned, to secure the payment, equally, of said bonds to be issued as above directed, and the interest as expressed.

163 And said mortgage may be in form of conveyance in trust to said Central Trust Company of New York or such third person or persons, corporation or corporations, as said board may select for the benefit of said bondholders; and may among other things provide that a failure to pay interest on any one hundred of said bonds for the period of sixty days after such interest may have matured, shall cause all of said bonds to become due and payable at the option of a majority in interest of said holders of said one hundred bonds in default; and it may also provide for sale by said mortgagee, trustee or trustees on public notice in case of default of principal or interest, or foreclosure by decree of court of competent jurisdiction, and may otherwise provide and be conditioned as said board of directors may deem necessary or proper. Said mortgage shall be filed and recorded as required by law; and when duly executed, said bonds, when issued under said mortgage shall be authenticated by certificate of said mortgagee or trustee, and thereupon the stockholders proceeded to vote upon said resolution and deposited their ballots with the inspector of votes who counted the same in the presence of the chairman, and the result being ascertained the same was, and was announced to be as follows:

Ayes ten thousand shares.

Nays none,

And so said resolution was, and was declared to be unanimously adopted.

Thereupon the chairman stated that there had been prepared under the supervision of the board of directors a form of bond and also of mortgage or deed of trust for the action of the meeting; and thereupon the secretary read to the meeting the form of bond as follows:

164

UNITED STATES OF AMERICA, *State of Illinois.*

No. —. $1,000 gold.

First-Mortgage Bond Chicago, Springfield & St. Louis Railroad Company.

Know all men by these presents, that the Chicago, Springfield & St. Louis Railroad Company is indebted to the Central Trust Company of New York, or bearer, in the sum of one thousand dollars which sum, for value received, said Chicago, Springfield & St. Louis Railroad Company hereby promises to pay, in gold coin of the United States of America, not inferior to the present standard value, to said Central Trust Company of New York or bearer hereof, or in case of registration to the registered holder, on the first day of May, A. D. one thousand nine hundred and thirteen, at the American Exchange National Bank of the City of New York, with interest thereon from the first day of May A. D. 1883, at the rate of six per centum per annum, payable semi-annually, free of United States

Government tax, at said bank, in gold upon the first days of May and November in each year, upon the presentation and surrender of the annexed coupons as they severally become due.

This bond may at the holder's option be registered in his name on the books of the company, and by noting the same by endorsement on the bond; and while the bond is so registered, otherwise
165 than to bearer, the principal shall be payable only to the person in whose name the bond stands registered, or to such person's order. After registry the bonds shall be transferable only by entry of transfer on said books by written authority of the registered holder, and noting the same by endorsement on the bond of the secretary.

This book is one of a series, amounting in the aggregate to two million five hundred thousand dollars, consisting of twenty-five hundred bonds of one thousand dollars each, and numbered from one to twenty-five hundred inclusive, all of which are of same date and equally secured by deed of trust or mortgage, dated the first day of May, A. D. eighteen hundred and eighty-three, duly executed and recorded in the proper offices in the State of Illinois, and conveying to the Central Trust Company of New York, in trust, all the railway of said company now constructed or being constructed, and in, or to be put in operation, or owned by said company in the State of Illinois; together with all and singular the equipments, appurtenances, franchises and property therein mentioned, as by reference thereto will more fully and at large appear, and which deed is a first mortgage and deed of trust on said property and franchises.

This bond is to be valid only when authenticated by a certificate of said trustee endorsed and signed hereon.

In testimony whereof, the said Chicago, Springfield & St. Louis Railroad Company has caused this bond to be signed by its president, who is hereunto duly authorized, and its corporate seal to be hereunto affixed, attested by the secretary, and the coupons annexed by the name of its treasurer, who also signs this bond; all on this the first day of May, A. D. 1883.

166 [CORPORATE SEAL.] —— ——, *President.*

Attest: —— ——, *Secretary.*

—— ——, *Treasurer.*

(*Coupon.*)

The Chicago, Springfield & St. Louis Railroad Company will pay to bearer thirty dollars at the American Exchange National bank, city of New York, on the first day of — for value received, being semi-annual interest due at said rate on bond No. —.

—— ——, *Treasurer.*

And the secretary also then read the form of mortgage as follows:

167 This indenture, made this first day of May A. D. eighteen hundred and eighty-three, by and between the Chicago, Springfield & St. Louis Railroad Company, a corporation of the State of Illinois, party of the first part and the Central Trust Com-

to mortgage, all and singular the corporate property, real and personal, and all the franchises of this corporation, now owned or hereafter to be owned, to secure the payment, equally, of said bonds to be issued as above directed, and the interest as expressed.

163 And said mortgage may be in form of conveyance in trust to said Central Trust Company of New York or such third person or persons, corporation or corporations, as said board may select for the benefit of said bondholders; and may among other things provide that a failure to pay interest on any one hundred of said bonds for the period of sixty days after such interest may have matured, shall cause all of said bonds to become due and payable at the option of a majority in interest of said holders of said one hundred bonds in default; and it may also provide for sale by said mortgagee, trustee or trustees on public notice in case of default of principal or interest, or foreclosure by decree of court of competent jurisdiction, and may otherwise provide and be conditioned as said board of directors may deem necessary or proper. Said mortgage shall be filed and recorded as required by law; and when duly executed, said bonds, when issued under said mortgage shall be authenticated by certificate of said mortgagee or trustee, and thereupon the stockholders proceeded to vote upon said resolution and deposited their ballots with the inspector of votes who counted the same in the presence of the chairman, and the result being ascertained the same was, and was announced to be as follows:

Ayes ten thousand shares.

Nays none,

And so said resolution was, and was declared to be unanimously adopted.

Thereupon the chairman stated that there had been prepared under the supervision of the board of directors a form of bond and also of mortgage or deed of trust for the action of the meeting; and thereupon the secretary read to the meeting the form of bond as follows:

164

UNITED STATES OF AMERICA, *State of Illinois.*

No. —. $1,000 gold.

First-Mortgage Bond Chicago, Springfield & St. Louis Railroad Company.

Know all men by these presents, that the Chicago, Springfield & St. Louis Railroad Company is indebted to the Central Trust Company of New York, or bearer, in the sum of one thousand dollars which sum, for value received, said Chicago, Springfield & St. Louis Railroad Company hereby promises to pay, in gold coin of the United States of America, not inferior to the present standard value, to said Central Trust Company of New York or bearer hereof, or in case of registration to the registered holder, on the first day of May, A. D. one thousand nine hundred and thirteen, at the American Exchange National Bank of the City of New York, with interest thereon from the first day of May A. D. 1883, at the rate of six per centum per annum, payable semi-annually, free of United States

Government tax, at said bank, in gold upon the first days of May and November in each year, upon the presentation and surrender of the annexed coupons as they severally become due.

This bond may at the holder's option be registered in his name on the books of the company, and by noting the same by endorsement on the bond; and while the bond is so registered, otherwise
165 than to bearer, the principal shall be payable only to the person in whose name the bond stands registered, or to such person's order. After registry the bonds shall be transferable only by entry of transfer on said books by written authority of the registered holder, and noting the same by endorsement on the bond of the secretary.

This book is one of a series, amounting in the aggregate to two million five hundred thousand dollars, consisting of twenty-five hundred bonds of one thousand dollars each, and numbered from one to twenty-five hundred inclusive, all of which are of same date and equally secured by deed of trust or mortgage, dated the first day of May, A. D. eighteen hundred and eighty-three, duly executed and recorded in the proper offices in the State of Illinois, and conveying to the Central Trust Company of New York, in trust, all the railway of said company now constructed or being constructed, and in, or to be put in operation, or owned by said company in the State of Illinois; together with all and singular the equipments, appurtenances, franchises and property therein mentioned, as by reference thereto will more fully and at large appear, and which deed is a first mortgage and deed of trust on said property and franchises.

This bond is to be valid only when authenticated by a certificate of said trustee endirsed and signed hereon.

In testimony whereof, the said Chicago, Springfield & St. Louis Railroad Company has caused this bond to be signed by its president, who is hereunto duly authorized, and its corporate seal to be hereunto affixed, attested by the secretary, and the coupons annexed by the name of its treasurer, who also signs this bond; all on this the first day of May, A. D. 1883.

166 [CORPORATE SEAL.] —— ——, *President.*

Attest: —— ——, *Secretary.*

—— ——, *Treasurer.*

(*Coupon.*)

The Chicago, Springfield & St. Louis Railroad Company will pay to bearer thirty dollars at the American Exchange National bank, city of New York, on the first day of — for value received, being semi-annual interest due at said rate on bond No. —.

—— ——, *Treasurer.*

And the secretary also then read the form of mortgage as follows:

167 This indenture, made this first day of May A. D. eighteen hundred and eighty-three, by and between the Chicago, Springfield & St. Louis Railroad Company, a corporation of the State of Illinois, party of the first part and the Central Trust Com-

pany of the city and State of New York, party of the second part, witnesseth:

That whereas, said party of the first part deems it necessary to borrow money for completing, finishing, improving and operating its railway now in course of construction, according to its charter, and to issue and dispose of its bonds for said purposes, and to secure the payment thereof by mortgage of its corporate property and franchises as provided by law, and has been duly authorized so to do by its stockholders, duly convened for the purpose according to the statute in such case made and provided at Litchfield, Illinois, on the 28th day of April A. D. 1883, at which said meeting all the stockholders were present and all the capital stock was represented and voted, and whereat the following resolution was unanimously adopted:

Resolved, That in order to complete, finish and improve and operate the road of this company, and to obtain the money and means therefor, it is necessary for this corporation to issue and dispose of its bonds in the sum of two million and five hundred thousand dollars, and to mortgage their corporate property and franchises to secure the payment of said debt so contracted; and that the board of directors of this company is therefore hereby authorized and directed by the proper officers and in good legal form to execute
168 and dispose of its bonds, for *for* the aggregate face value of two million and five hundred thousand dollars. Said bonds shall bear date May 1st, 1883, and shall be each of the denomination of one thousand dollars; and they shall be numbered consecutively from one (1) to twenty-five hundred (2500), both inclusive; the principal shall be payable thirty years after the date thereof at the American Exchange National bank in the city of New York, to the Central Trust Company, of New York, or bearer, in gold, of present standard value, and shall bear interest from date of the bond, at the rate of six per centum per annum, payable to bearer at said bank semi-annually, in gold, on presentation and surrender of the coupons to be annexed to said bonds; and said bonds may provide for registration of the same by the holder at any time.

And the said board of directors is further authorized, empowered and directed by the proper officers and in good and sufficient form, to mortgage, all and singular, the corporate property, real and personal, and all the franchises of this corporation, now owned or hereafter to be owned to secure the payment, equally, of said bonds to be issued as above directed, and the interest as expressed. And said mortgage may be in form of conveyance in trust to said Central Trust Company, of New York, or such third person or persons, corporation or corporations, as said board may select, for the benefit of said bondholders; and may among other things, provide that a failure to pay interest on any one hundred of said bonds for the period of sixty days after such interest may have matured, shall cause all said bonds to become due and payable at the option of a majority in interest of said holders of said one hundred bonds in default, and it may also provide by sale by said mortgage,
169 trustee or trustees, on public notice in case of default of prin-

cipal or interest, or foreclosure by decree of court of competent jurisdiction, and may otherwise provide and be conditioned as said board of directors may deem necessary or proper. Said mortgage shall be filed and recorded as required by law; and when duly executed, said bonds, when issued under said mortgage, shall be authenticated by certificate of said mortgagee or trustee.

And whereas said party of the first part pursuant to said resolution and authority has executed its certain twenty-five hundred (2500) bonds of even date herewith of the denomination of one thousand dollars each, payable in gold thirty (30) years after date, to the said Central Trust Company, of New York, or bearer, at the American Exchange National Bank of the City of New York, with interest from date at the rate of six per centum per annum, payable semi-annually at said bank, in gold, on the first days of May and November, upon presentation of the coupons thereunto annexed, and all of which bonds are in due form as the following:

UNITED STATES OF AMERICA, *State of Illinois.*

No. —. $1,000 gold.

First-Mortgage Bond, the Chicago, Springfield and St. Louis Railroad Company.

Know all men by these presents, that the Chicago, Springfield & St. Louis Railroad Company is indebted to the Central Trust Company, of New York, or bearer, in the sum of one thousand
170 dollars, which sum for value received *received* said Chicago, Springfield & St. Louis Railroad Company hereby promises to pay in gold coin of the United States of America, not inferior to the present standard value, to said Central Trust Company, or bearer hereof, or in case of registration, to the registered holder, on the first day of May A. D. one thousand nine hundred and thirteen, at the American Exchange National Bank of the City of New York, with interest thereof from the first day of May A. D. 1883, at the rate of six per centum per annum, payable semi-annually, free of United States Government tax, at said bank in gold upon the first days of May and November, in each year upon presentation and surrender of the annexed coupons as they severally become due.

This bond may, at the holder's option be registered in his name on the books of the company, and by noting the same by indorsement on the bond; and while the bond is so registered, otherwise than to bearer, the principal shall be payable only to the person whose name the bond stands registered, or to such person's order.

After registry, the bond shall be transferable only by entry of transfer on said books by written authority of the registered holder, and noting the same by endorsement on the bond by the secretary.

This bond is one of a series amounting in the aggregate to two million and five hundred thousand dollars, consisting of twenty-five hundred bonds of one thousand dollars each and numbered from one to twenty-five hundred, inclusive, all of which are of same date and

equally secured by a deed of trust or mortgage, dated the first
171 day of May, A. D. eighteen hundred and eighty-three, duly executed and recorded in the proper offices in the State of Illinois, and conveying to the Central Trust Company, in trust, all the railway of said company, now constructed or being constructed and in or to be put in operation or owned by said company in the State of Illinois; together with all and singular the equipments, appurtenances, franchises, and property therein mentioned as by reference thereto will more fully and at large appear, and which deed is the first mortgage and deed of trust on said property and franchises.

This bond is to be valid only when authenticated by a certificate from said trustee endorsed and signed hereon.

In testimony whereof, the said Chicago, Springfield & St. Louis Railroad Company has caused this bond to be signed by its president, who is thereunto duly authorized, and
[CORPORATE SEAL.] its corporate seal to be hereunto affixed, attested by its secretary, and the coupons annexed by the name of its treasurer, who also signs this bond; all on this first day of May, A. D. eighteen hundred and eighty-three.

By —— ——, *President.*

Attest: —— ——, *Secretary.*

—— ——, *Treasurer.*

(*Coupon.*)

The Chicago, Springfield & St. Louis Railroad Company will pay to bearer thirty dollars at the American Exchange National bank, city of New York, on the first day of ——, for value received,
172 being semi-annual interest, due at said date, on bond No. —.

—— ——, *Treasurer.*

Now, therefore, this indenture witnesseth, that for the purpose of securing the payment of the principal and interest on its aforesaid bonds of said company, said bonds amounting in the aggregate to $2,500,000.00 as aforesaid, the said Chicago, Springfield & St. Louis Railroad Company, party of the first part herein, hath granted, bargained, sold, released, conveyed and confirmed, and by *the* these presents doth grant, bargain, sell, release, convey and confirm, unto the said party of the second part, the Central Trust Company of New York, and its successors and assigns forever, for whomsoever may from time to time be the holder or holders of said bonds hereby intended to be secured, all and singular the several pieces or parcels of land forming the track or roadway of said railroad company from a point on the Gilman and Clinton branch of the Illinois Central railway at the city of Springfield and extending by way of Litchfield and Mt. Olive to the bridge junction at East St. Louis, Illinois, a distance of about ninety-eight miles passing through the towns of Crow's Mills, Pawnee, White Oak, Litchfield, Mt. Olive, Alhambra, Nervine Troy, and Collinsville, and being in or through the counties of Sangamon, Montgomery, Macoupin, Madison and St. Clair, whether the same is now a-quired and owned by said railroad company or may be here-

after a-quired and owned by said company; also the railroad of said party of the first part and any and all its branches thereof and any and all switches and turnouts thereof, together with all the
173 rails, bridges, depots, stations, station-houses, section-houses, fences and other structures and appurtenances thereto belonging now owned by said railroad company, or that may hereafter be constructed, completed, finished, a-quired or owned by said company; also, all the tolls, income, issues and profits and alienable franchises of said party of the first part, connected with its railroad or relating thereto, including its rights and franchises as a corporation; and also, all and singular the property of every kind hereinafter mentioned, whether now owned or that may hereafter be a-quired and owned by said railroad company, that is to say, all the rolling stock of every description, all the machine shops, car shops and blacksmith shops, all the machinery, stationary engines and all articles used in the construction, replacing and repairing thereof, together with all the tools and materials and any and all other property now owned or hereafter to be a-quired by said party of the first part.

To have and to hald all and singular the hereby granted and conveyed premises and property with appurtenances and all goods and chattels hereinbefore bargained and sold to the said party of the second part, its successors or assigns forever. Provided, always, and these presents are upon the express condition that if the party of the first part shall well and truly pay the holders of the bond- issued as hereinbefore stated, or of such of said bonds as shall from time to time be outstanding and unpaid and every of them, the principal and interest moneys to grow due on said bond-, respectively, at the times and in the
174 manner mentioned in the said bonds, according to the true intent and meaning of the same; and, provided, also, said party of the first part shall, whenever required by said mortgagee, or trustee, keep paid off and discharged all taxes and assessments which may at any time be imposed upon the real or personal estate or franchises hereby granted, bargained and sold or intended so to be, or upon any portion of either and all specific or general taxes upon any of the property, real or personal, or any franchises of the said party of the first part when the payment may be necessary, essential or material to the protection of the security herein created; then, and from thenceforth, these presents, and the estate hereby granted, shall cease and determine and be null and void; and this indenture shall be released of record.

But, in case default be made in the payment of the principal or interest of said bonds hereby secured or such of them as may be from time to time outstanding or any of them or any part of either as said principal or interest shall fall due according to the tenor of said bonds, or in case the said party of the first part shall fail to keep paid off and discharge the taxes and assessments which may be imposed upon the mortgaged premises or property or any part thereof, as hereinbefore provided, or any specific or general liens on said premises or property the payment whereof may be neces-

sary, essential or material to the protection of the security hereby created, or in case said party of the first part shall make default in the performance of any of the covenants on its part herein contained; then, and in either of the cases specified
175 this conveyance herein contained shall be in full force and effect and it shall be lawful for the party of the second part, or its successor or successors and said party of the first part doth hereby fully authorize and empower them with the aid and assistance of any persons or person on the application of the owner or owners of one hundred of said bonds, then outstanding secured by this mortgage to enter upon and take possession of the said railroad and all and singular the premises hereinbefore described or mentioned, and all and every part thereof, and to hald the same and every part thereof in possession for the benefit of the holders of the bond- hereby secured, and to retain and keep possession of the said property, real or personal, use and operate the same, and make from time to time *to* necessary or proper repairs and replacement, and receive the earnings, rents, issues and profits until a sale thereof shall be made, pursuant to law under the provisions hereof, rendering an account thereof to the party of the first part, and after paying all current expenses, and the expenses of necessary repairs and replacements, and all other proper costs, charges, expenses, taxes, assessments and all other necessary payments to apply the surplus, if any, to the payment *pro rata* of the interest and principal of the bonds hereby secured and then outstanding.

And, in case such default shall continue for a period of three months, said party of the second part or its successor or successors, upon request of the holders of one hundred of the then outstanding bonds hereby secured, after entry made as aforesaid, or with-
176 out said entry, are hereby authorized and empowered to grant, bargain and sell the property, and premises, rights and franchises hereby mortgaged, conveyed, and all the right title and interest mentioned of the party of the first part therein, at public auction in the city of Springfield, Illinois, after an advertisement in two newspapers, one published in the city of Chicago, and one in said city of Springfield for a period of at least ninety days and as the attorneys of the party of the first part by these presents duly constituted and appointed, and as such mortgagees or trustees make, execute seal and deliver to the purchaser or purchasers therefor a good and sufficient deed or deeds, bill or bills of sale, conveyance or conveyances in fee simple for the same, and out of the moneys arising from such sale, after paying the expenses of such sale, including a just compensation to said mortgagee or trustee for services and expenses and all moneys expended necessary repairs or replacements or necessary expenses to pay the several holders of the then outstanding bond-, and coupons hereby secured, the amount of principal or interest which may be due or unpaid to them respectively or so much thereof as there shall be funds to pay, and in case of deficiency paying to all entitled with *pro rata* equality rendering the surplus, if any, to the party of the first part, its successors or assigns; which sale, so to be made shall forever be a perpetual bar

both in law and in equity against said party of the first part its successors or assigns, and all other persons claiming or to claim the premises so sold or any part thereof by or under said party of the first part, its successors or assigns.

177 And it is further provided that if the laws of the State of Illinois shall at the time of such default prohibit a sale in the manner hereinbefore provided, and require, as the same now do, that no real estate within the State shall be sold by virtue of any power to sell, contained in any mortgage, trust deed, or other conveyance in the nature of a mortgage; but that such mortgage, trust deed or other conveyance in the nature of a mortgage shall only be foreclosed in the manner provided for foreclosing mortgages containing no power of sale; and no real estate shall be sold to satisfy any such mortgage, trust deed or other conveyance in the nature of a mortgage, except in pursuance of the judgment and decree of the court of competent jurisdiction, then as to the said real estate by this instrument conveyed or intended to be conveyed, and if the trustee deems best in such event, as to all of the property real, personal or mixed, he shall proceed in a court of competent jurisdiction to foreclose the mortgage and deed of trust and obtain judgment and decree thereon, and upon said indebtedness, and sell the same as in and by the decree of said court shall be required, and the proceeds pay and distribute as said court may order and decree, and according to the provisions and the true intent and purpose of this conveyance.

And it is hereby expressly agreed by said party of the first part that upon default made in the payment of either interest or principal on any one hundred of said bonds for the period of sixty days, then each and all of said bonds shall become absolutely due

178 at the option of the majority in interest of the holders of said one hundred bonds, in default; and upon decree rendered as aforesaid, — judgment shall be made for the whole of said indebtedness thus due upon default of the part of said indebtedness — is s-all absolutely due, according to the terms of said bond, then for said indebtedness so due.

And if said premises conveyed may not pay the whole said judgment and decree, that a general execution may issue for the remainder. And it is further provided, that no bond shall be entitled to the benefit of the security hereby provided unless there shall be endorsed therein a certificate subscribed by the party of the second part, or its successors, as trustee, identifying it as one of the bonds issued under and secured by this mortgage.

And said party of the first part for itself and its successors further covenants with said party of the second part, its successors or assigns, that said party of the first part will, at the reasonable request of said party of the second part or its successors, make and execute all further assurances, conveyances and instruments needful or proper to assure or convey unto the said second party, or to its successors or assigns, the premises, property, fixtures, rolling stock, equipments and other property, real and personal, hereby intended to be mortgaged and conveyed, and all premises, property and appurtenances

and rolling stock and equipments that may hereafter be a-quired by the party of the first part and may appertain to said railroad
179 or its branches, on same terms and conditions as their conveyance, if at any time said further assurance or conveyance is deemed requisite or proper in addition to or support of the conveyance hereby made.

And, this indenture further witnesseth, that said party of the first part for and in consideration as aforesaid has covenanted, promised, and agreed, to and with said party of the second part, its successors or assigns, in the trust hereby created that said party of the first part and its successors shall and will well and truly pay or cause to be paid to the respective holders of said bonds, for two and one-half millions of dollars, issued under and secured by this mortgage, or such of the same as shall be outstanding and unpaid, the principal thereof and the interests thereon, as the same shall from time to time become payable, according to the tenor of said bonds and the coupons accompanying the same respectively and that upon failure to pay the interest upon one hundred of said bonds as the same matures, and for sixty days thereafter, all of the said bonds, principal and interest, shall become due and payable as hereinbefore provided.

And the said party of the first part, for itself, its successors and assigns, doth agree to waive and doth hereby absolutely and irrevocably agree to relinquish the benefit and advantage of all valuation, stay, appraisement, extension or redemption law or laws, now existing or which may hereafter be passed and exist in the said State of Illinois, which but for this provision, agreement and waiver, might be applicable to the same hereindefore authorized to
180 be made by said mortgagee or trustee of said railroad and other mortgaged premises or to any judicial sale which may be made of said mortgaged railroad premises or any part thereof, under or by virtue of the judgment or decree of any competent court in a suit instituted for the foreclosure of this mortgage or for the enforcement of the lien by this indenture created.

And it is hereby conenanted and agreed that any trustee under this indenture other than the original trustee therein named, may at any time be removed from the trust by instrument in writing under the hands and seals of the holders of a majority in interest of all the outstanding bonds secured thereby, or their attorneys-in-fact thereunto authorized.

And it is further declared, provided and agreed that in case a vacancy shall at any time exist in the trusteeship hereunder by reason of removal, death, expiration of legal existence or legal incapacity of the trustee, or trustee for the time being, or either of them, or of the resignation of any such trustee accepted in writing by a majority in interest of the bondholders or by a court of competent jurisdiction, or of a vacancy in such trusteeship otherwise lawfully occurring and existing, a majority in interest of the holders of the then outstanding bonds issued hereunder, shall have the right and power by instrument in writing, under hand and seal, to appoint a new trustee or trustees to fill such vacancy, in case the vacancy shall be caused by the party of the second part, or any corporation

appointed in its place ceasing to be trustee, such vacancy may so be filled by a majority of the bondholders in interest,
181 by the appointment as trustee of another corporation having lawful power to execute such trust, or of one or more individual trustees, and until such an appointment of a trustee or trustees to fill any vacancy shall have been made by the majority in interest of said bondholders under the power in that behalf above contained, the board of directors for the time being of the party of the first part may appoint a new trustee or trustees to fill such vacancy for the time being; and in case of any vacancy being so filled by such appointment by the board of directors, it shall be competent for any court of equitable powers having jurisdiction in the premises, upon the application of any bondholder or bondholders holding not less than one hundred thousand dollars in amount of said bonds, to annul such appointment, and appoint a trustee or trustees in place of the trustee or trustees so appointed by the directors, to hold the trust for a like term as he or they would have held the same under the appointment by said directors, but no longer.

And it is declared and agreed that the due appointment of a trustee or trustees in any of the modes herein provided, shall be effectual to invest in such trustee or trustees the appropriate estate, rights, powers and duties as herein provided in that behalf without any new deed or conveyance, but nevertheless the said railway company hereby covenants in any and every such case to make and execute upon request any such deeds, conveyances or assusances as may be appropriate for more fully and certainly vesting in and con-
182 firming to such new trustee such estate, rights, powers and duties, and in every case of resignation of a trustee the resigning trustee shall if requested make and execute such deeds, conveyances or assurances to his successor.

And it is further agreed, that the said party of the second part shall be held liable for fraud or gross negligence only, and shall be entitled to just compensation for all services rendered and all expenses incurred, or to which it may be subjected in the execution of the trust hereby created, which compensation and expenses shall be paid out of the trust estate in preference to any and all charges thereon and that it shall not be required to act in execution of the trust hereby created, except at its own option, unless requested so to do by some person or party having a direct interest under the trust and furnishing reasonable indemnity against loss or damage to the trustee, and for costs and expenses which may be thereby incurred. And it is further provided, that until default as hereinbefore specified, said party of the first part shall have the right to the direct and immediate possession use and enjoyment of all and singular the premises hereinbefore mentioned as against said party of the second part, or its successors or the holder or holders of said bonds or either of them.

In witness whereof said party of the first part has caused to be hereto affixed its corporate seal, and attested by its secretary
183 and these presents to be subscribed by its president; and said

party of the second part, in witness of its acceptance of the conveyance and trust herein conferred has also caused these presents to be signed by its president and its corporate — to be affixed and attested by its secretary, all the day and year first hereinabove written.

Corporate Seal.

THE CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD COMPANY.
—— ——, *President.*

Attest: —— ——, *Secretary.*

CENTRAL TRUST COMPANY.
[CORPORATE SEAL.] —— ——, *President.*

Attest: —— ——, *Secretary.*

STATE OF ILLINOIS, }
County of Montgomery, } *ss:*

Be it remembered that on this — day of ——, A. D. 1883, before me, —— ——, a notary public in and for said county of Montgomery, personally appeared —— ——, who is president of the Chicago, Springfield & St. Louis Railroad Company, an incorporated railroad company, to me personally known to be such, and also —— ——, the secretary of said company, personally known to me to be such, and the said —— —— did, in my presence, subscribe said indenture as president of said company and cause the seal of said company to be affixed thereunto, and the said secretary 184 did then and there, in my presence, attest the said seal by his signature to said indenture, and the said —— —— and the said —— ——, who are severally and personally known to me to be the same persons whose names are subscribed to the foregoing instrument in writing as president and secretary respectively, as aforesaid, and as having executed said instrument for and on behalf of said railroad company, grantor therein, severally acknowledged the same to be the voluntary act and deed of the said Chicago, Springfield and St. Louis Railroad Company and the voluntary act and deed of each of them, as said president and secretary respectively, for the consideration and purposes therein mentioned and set forth, and said —— ——, being by me duly sworn, did depose and say he is president of the said Chicago, Springfield & St. Louis Railroad Company, and that the seal affixed to the foregoing instrument is the corporate seal of said company and was thereunto affixed by the authority of the said company, and that he, as said president and as said secretary, subscribed the same by like authority.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this day last above written.

—— ——,
Notary Public.

And thereupon Mr. Southworth moved the adoption of the following resolution, the same being seconded by Mr. Brown:

Resolved, That the form of bond and the form of mortgage or deed of trust in the words and figures as the same have
185 been read to the meeting, and which are spread on the minutes of this meeting next preceding this resolution, be, and the same are hereby, approved and adopted to be the forms by which the officers of this company shall carry the resolutions of this company into effect: Provided, however, that the board of directors may modify, change, or add to said forms to any degree which to them may seem proper and consistent with the general purposes for which the same have been hereby approved, and the board of directors are hereby directed and authorized to have said bonds and mortgage duly executed and delivered on behalf of this company in pursuance of the resolutions of this meeting.

And resolved further that the board of directors, by the proper officers and in such manner and by such means, deeds, and agreements as it may seem best and proper, — hereby authorized and directed to have said contract of construction carried into effect, to issue said bonds and mortgage, and place said stock as by said contract provided and required, and in all ways to promote and secure the early construction, completion, and equipment of the road and put the same into operation.

And further resolved that said stock shall be issued in certificates for such amount of shares as said Empire Construction Company may request, and that said shares shall be, upon delivery thereof to said construction company under said contract and upon compliance by said construction company with the terms of said agreement, the absolute property of said construction company or its assigns, and shall be, as by said agreement provided, full-paid and
186 non-assessable; but provided that until said construction company shall become fully entitled to such stock and have received the same the unearned shares and shares undelivered to it or its assigns shall be represented by the original subscriber- in all meetings of this corporation, and said subscribers shall be and remain liable therefor.

And thereupon, upon vote by ballot under the supervision of the inspector, the result was and was declared to be as follows:

Ayes, ten thousand shares.
Nays, none.

And so said resolutions were and were declared unanimously adopted.

Thereupon the chairman placed before the meeting the proceedings of a meeting of the board of directors, at East St. Louis, Illinois, on February seventeenth, A. D. 1883; whereupon, on motion of Mr. Black, seconded by Mr. Beach, it was unanimously resolved, no one dissenting, that the proceedings of said board at said meeting held

are hereby approved, ratified, and confirmed, and all acts done in pursuance thereof are and shall be binding on this corporation.

And thereupon, on motion by Mr. Brown, seconded by Mr. Frary, no one dissenting, the meeting adjourned *sine die*.

JOHN A. HUNTER, *Chairman*.

GEORGE N. BLACK, *Secretary*.
H. H. BEACH.
C. C. BROWN.
E. SOUTHWORTH.
WILLIAM R. FRARY.

187 *Meeting of the Board of Directors at Litchfield, Illinois, April 28th*, 1883.

At a meeting of the board of directors of the Chicago, Springfield & St. Louis Railroad Company held at Litchfield, Illinois, on this the twenty-eighth day of April, A. D. 1883, and on due notice given, there were present the following: Elizur Southworth, Henry H. Beach, Christopher C. Brown, George N. Black, John A. Hunter, and William R. Frary, and assented to this meeting as expressed by their signatures hereto.

The president took the chair and thereupon the secretary presented and read to the board the minutes of the stockholders' meeting this day held at Litchfield, and which are in form and substance the same as those hereinbefore recorded as the minutes of said meeting; and thereupon, on motion of Mr. Black, seconded by Mr. Beach, it was unanimously resolved that the minutes be received and filed for the further direction of the board and officers; and further resolved that the president and treasurer, under seal of the corporation, attested by the secretary, do proceed to execute and deliver to the Central Trust Company of New York bonds to the amount of two millions five hundred thousand dollars, to the number and form designated in said resolutions, and also that the president, under seal of the corporation, attested by the secretary, do also make, execute, acknowledge, and deliver a mortgage or deed of trust to said Central Trust Company of New York to secure the payment of said bonds and each of them in form and with the terms and conditions in said resolutions designated and approved.

188 Provided, however, that if the president may find it necessary to change said deed of trust in any of its terms he is hereby authorized to do so before final delivery.

And further resolved, That the proper officers of the company are hereby further and fully authorized, directed, and required to carry into prompt and complete effect all the different resolutions of the stockholders as by their minutes expressed, and to execute and deliver in due form all the necessary bonds, deeds, documents, and papers

and acts to do necessary or proper to effect and accomplish the letter and spirit of said resolutions or those of this board.

E. SOUTHWORTH, *President.*

J. H. ATTERBURY, *Secretary.*
H. H. BEACH.
C. C. BROWN.
JOHN A. HUNTER.
WILLIAM R. FRARY.
GEO. N. BLACK.

Meeting of the Board of Directors on May 25, A. D. 1887.

The board of directors of the Chicago, Springfield & St. Louis Railroad Company met at Springfield, Illinois, pursuant to a call of the president served on each member as required by the by-laws, and there were present Messrs. Southworth, Frary, Hunter, Black, and Brown, the president in the chair.

The secretary read the minutes of the previous meetings of the board and of the stockholders, which were approved.

189 Elizur Southworth, the president of the company, then presented his resignation as president of the company, to take effect upon its acceptance by the board of directors.

Thereupon, on motion of Mr. Black, seconded by Mr. Frary, it was unanimously resolved that the resignation of Elizur Southworth of the office of president be, and the same is hereby, accepted and the office of president declared vacant, and that the board do now proceed to fill said vacancy.

Thereupon Christopher C. Brown, one of the members of the board, was put in nomination for president, and the board proceeded to vote to fill said office, and the votes having been taken the president announced the result, and it appeared that for Christopher C. Brown for president there had been cast four votes and none for any one else, and therefore Christopher C. Brown was declared to be duly elected president of the company.

On motion of Mr. Black, seconded by Mr. Hunter, it was "Resolved that E. Southworth having received from W. R. Frary the sum of six thousand dollars, on demand therefor, in compensation for his services for this company in its formation, obtaining rights of way and his salary as president, and for all services by said Southworth performed or expenses incurred by him in any way connected with the property or business of this company or the construction of the road, said Frary having advanced the same on account of this company, the said payment is hereby ratified and the proper officers are hereby authorized and directed to credit

190 W. R. Frary for the sum above on the books of the company and pay the same to him."

On motion of Mr. Frary, it was resolved that the compensation of secretary of this company be fixed at the rate of three hundred dollars a year, and such shall be the rate of compensation of secre-

tary from the beginning of his service until his position may be vacated, and said compensation shall be payable quarterly.

On motion of Mr. Black, the board adjourned *sine die.*

CHRISTOPHER C. BROWN, *President.*

J. H. ATTERBURY, *Secretary.*
H. H. BEACH.

Board Meeting, Jan. 7th, 1884.

The board of directors of the Chicago, Springfield & St. Louis Railroad Company met at the office of the company in Litchfield, Illinois, on the 7th day of January, A. D. 1884, and all the members assented to the meeting, as shown by their signatures hereto. There were present Messrs. C. C. Brown, Geo. N. Black, John A. Hunter, and H. H. Beach.

The meeting was called to order by the president, C. C. Brown.

The resignation of Mr. E. Southworth having been presented as director of this company and the secretary having reported to the meeting that the stock formerly held by Mr. Southworth had been transferred to C. J. Keiser, on motion by Mr. Geo. N. Black
191 it was resolved that the resignation of E. Southworth as a director of this company be accepted, and that by reason of said resignation and said transfer of stock the office of director held by E. Southworth be declared vacant.

On motion of Geo. N. Black, Mr. C. J. Keiser was elected director of the company to fill the unexpired term of E. Southworth.

On motion of Geo. N. Black, the board adjourned *sine die.*

CHRISTOPHER C. BROWN, *President.*

J. H. ATTERBURY, *Secretary.*
GEO. N. BLACK.
H. H. BEACH.
JOHN A. HUNTER.

Stockholders' Meeting.

JANUARY 7TH, 1884.

The stockholders of the Chicago, Springfield and St. Louis Railroad Company met pursuant to notice required by law. The meeting was called to order by Mr. C. C. Brown, and, on motion, *of* Mr. C. J. Keiser was chosen chairman and Mr. John A. Hunter was chosen secretary.

Mr. C. C. Brown moved that the board of directors be elected to fill the vacancy of members whose term of — expires, viz: W. R. Frary, Geo. N. Black, and John A. Hunter.

Mr. George N. Black moved that an inspector of votes be
192 appointed; whereupon the president appointed Mr. C. C. Brown as such inspector.

The election by ballot of directors resulted in the choice of the following gentlemen as directors of the Chicago, Springfield & St.

Louis Railroad Company to serve two years, viz., A. H. Stonebraker, George N. Black, John A. Hunter, and they were declared severally elected.

On motion of Mr. C. C. Brown, the meeting adjourned.

C. F. KEISER, *Chairman.*

JOHN A. HUNTER, *Secretary.*

The foregoing is a full and complete copy of the proceedings of a stockholders' meeting held as therein stated.

C. F. KEISER, *Chairman.*

JOHN A. HUNTER, *Secretary.*

Board Meeting, January 7th, 1884.

The board of directors of the Chicago, Springfield & St. Louis Railroad Company met at the office of the company on January 7th, 1884, after the stockholders' meeting mentioned in the minutes immediately preceding.

Mr. C. C. Brown acted as temporary chairman and called the house to order, and J. H. Atterbury acted temporary secretary.

193 There were present Messrs. C. C. Brown, Geo. N. Black, H. H. Beach, C. J. Keiser, John A. Hunter, and A. H. Stonebraker.

On motion of Mr. Geo. N. Black, Mr. John A. Hunter was chosen president of the board for the ensuing year.

On motion by Mr. C. C. Brown, Mr. A. H. Stonebraker was chosen vice-president for a like term.

On motion by Mr. George N. Black, J. H. Atterbury was chosen secretary, and, on motion by Mr. John A. Hunter, Mr. H. H. Beach was chosen treasurer.

On motion by Mr. George N. Black, Messrs. H. H. Beach, John A. Hunter, and A. H. Stonebraker were appointed the executive committee to serve under the by-laws for one year.

On motion by Mr. Geo. N. Black, the board adjourned *sine die.*

JOHN A. HUNTER, *President.*

J. H. ATTERBURY, *Secretary.*
CHRISTOPHER C. BROWN.
GEO. N. BLACK.
H. H. BEACH.
A. H. STONEBRAKER.

Stockholders' Meeting.

LITCHFIELD, ILLINOIS, *April* 22, 1885.

The stockholders of the Chicago, Springfield & St. Louis Railroad Company met at the office of the secretary of said company at 11 o'clock a. m. on the 22nd day of April, 1885, pursuant to notice published and mailed as required by the by-laws of said company and by the statute, and there were present and voting the follow-

ing stockholders, representing the shares owned by them as
194 follows, respectively:

H. H. Beach, 5 shares; C. J. Keiser, 5 shares; C. C. Brown, 5 shares; John A. Hunter, 5 shares; G. N. Black, 5 shares; L. H. Thomas, 5 shares, and John J. McLean, 70 shares.

The meeting was called to order by C. C. Brown, and, on motion, John A. Hunter was elected chairman and J. H. Atterbury was chosen secretary.

On motion of G. N. Black, the meeting proceeded to elect three directors to fill the vacancies occasioned by the expirations of the terms of H. H. Beach, C. J. Keiser, and C. C. Brown.

And C. C. Brown having been appointed teller, and the vote having been cast and canvassed, and the election having been by ballot, the result was and was declared to be as follows:

H. H. Beach, C. J. Keiser, and J. J. McLean were elected directors of the company pursuant to law and the by-laws of the company.

On motion of G. N. Black, the meeting adjourned to meet at the office of the Empire Construction Company, in Litchfield, Illinois, at 2 o'clock p. m. on this day.

Meeting adjourned.

JOHN A. HUNTER, *Chairman.*

J. H. ATTERBURY, *Secretary.*

To the board of directors of the Chicago, Springfield & St. Louis Railroad Company:

The undersigned, chairman and secretary respectively of the meeting of the stockholders of said company on the 22nd day of
195 April, 1885, at 11 o'clock a. m., hereby report that the foregoing is a full, true, and correct report of the proceedings at said meeting had.

Witness our hands this April 22nd, 1885.

JOHN A. HUNTER, *Chairman.*

J. H. ATTERBURY, *Secretary.*

"Adjourned" Stockholders' Meeting.

The stockholders of the Chicago, Springfield & St. Louis Railroad Company met pursuant to adjournment at the office of the Empire Construction Company at 2 o'clock p. m.

Present: Same as in the morning—Mr. John A. Hunter in the chair and John J. McLean as secretary.

On motion of G. N. Black, the following resolution was offered and unanimously adopted:

"Whereas it has come to the knowledge of the stockholders of this company that the Empire Construction Company is unable to execute the contract entered into with this company on the 3rd day of March, 1883, on account of financial embarrassment: Therefore

Resolved, That the board of directors be requested — make such arrangements with said company or other parties as will secure the

construction of this road and preserve the rights of all parties interested, and that they be authorized to modify or change said contract or make a new contract with the Empire Construction Company if they think necessary to secure the building of this road, maintaining legal rights of all parties concerned, and upon the surrender of all outstanding bonds said directors may satisfy the
196 present mortgage and issue new bonds and secure same by mortgage on the property and franchises of this road."

On motion of H. H. Beach, the stockholders' meeting adjourned *sine die*.

JOHN A. HUNTER, *Chairman.*

JOHN J. McLEAN, *Secretary.*

Board Meeting.

LITCHFIELD, ILLINOIS, *April* 22, 1885.

The board of directors of the Chicago, Springfield & St. Louis Railroad Company met at the office of the Empire Construction Company, in the city of Litchfield, Illinois, at 11½ o'clock a. m., on the 22nd day of April, A. D. 1885.

Mr. John A. Hunter acted as temporary chairman and J. H. Atterbury as secretary.

The meeting was called to order by the chairman.

There *was* present Messrs. John A. Hunter, G. N. Black, H. H. Beach, C. J. Keiser, & J. J. McLean.

Mr. Hunter presents the resignation of A. H. Stonebraker, vice-president and director, which is as follows:

ST. LOUIS, MO., *March* 30, 1885.

Mr. John A. Hunter, pres't C., S. & St. L. R. R. Co.

DEAR SIR: I hereby tender my resignation as vice-president and director of said company.

Respectfully, A. H. STONEBRAKER.

On motion of G. N. Black, the resignation of Mr. Stone-
197 braker was unanimously accepted.

C. J. Keiser nominated Lewis H. Thomas to fill said vacancy, and, on motion of H. H. Beach, Lewis H. Thomas was elected director *viva voce*.

On motion of G. N. Black, John A. Hunter was unanimously chosen president of the board of directors for the ensuing year. Mr. G. N. Black was unanimously chosen vice-president, on the motion of C. J. Keiser, for like term. On motion of G. N. Black, John J. McLean was unanimously chosen secretary for the ensuing year, and, on motion of G. N. Black, H. H. Beach was unanimously chosen treasurer for the term of one year.

On motion of H. H. Beach, no one dissenting, the board adjourned until 2½ o'clock p. m.

JOHN A. HUNTER, *President.*

JOHN J. McLEAN, *Secretary.*

Board of directors met, in pursuance of adjournment, at 2½ o'clock p. m., at the office of the Empire Construction Company, on April 22nd, 1885.

Present: Same as in the morning.

President John A. Hunter in the chair and McLean secretary.

On motion of G. N. Black, the chairman appointed G. N. Black, H. H. Beach, and C. J. Keiser an executive committee to act in conjunction with the chair. Mr. Chairman presented bill of J. H. Atterbury for $375.75 for one and one-quarter year salary as secretary of this company, which, on motion of H. H. Beach, is referred to the executive committee.

On motion of G. N. Black, the salary of Jno. J. McLean as secretary of this company is fixed at one hundred and fifty
198 ($150) per annum.

On motion, the board adjourned *sine die*.

JOHN A. HUNTER, *President*.

JNO. J. McLEAN, *Secretary*.

Called Meeting of the Board.

The board of directors of the Chicago, Springfield & St. Louis Railroad Company met at the office of the Empire Construction Company, in the city of Litchfield, at 3½ o'clock p. m., on April 22nd, 1885. There were present same as former meeting of this date, except Mr. Jno. A. Hunter.

Mr. G. N. Black presided as chairman and John J. McLean as secretary.

On motion of L. H. Thomas, —— Olmstead was appointed chief engineer for this company, at a salary of $250 per month, said salary to be paid by the Empire Construction Company.

On motion of H. H. Beach, Mr. C. C. Brown, attorney, was invited to appear before the board to consult and advise with R. McWilliams, attorney, in relation to the legal rights of this company in issuing new bonds.

The following resolution was offered by Lewis H. Thomas, and was unanimously adopted by the board:

"Resolved, That upon the delivery and cancellation of all the outstanding first-mortgage bonds of this company, we agree to issue seven hundred (700) bonds of one thousand ($1,000) dollars each, the same to be a first mortgage upon all the property and franchises of this company, the same to draw six (6) per cent. interest, payable semi-annually at —— in ——
199 Said bonds to be dated May 1st, 1885, and to run thirty (30) years."

H. H. Beach offered the following resolution, which, on motion of L. H. Thomas, was unanimously adopted:

"Resolved, That on the execution of the new issue of bonds the Empire Construction — shall receive eighty (80) per cent. on all vouchers and for all work heretofore done, and said Empire Con-

struction Company shall also receive eighty (80) per cent. of the amount hereafter expended in the construction of said road, to be ascertained by the engineer's and president's certificates of amount of work done, but no certificate is to be issued for a less amount than five thousand dollars ($5,000.00), said bonds to be paid as said certificates are presented."

On motion of H. H. Beach, no one dissenting, the board adjourned to meet at this place on Wednesday, April 29th, 1885, at 10 o'clock a. m.

GEO. N. BLACK, *President.*

JNO. J. McLEAN, *Secretary.*

Special Meeting of the Board of Directors of the Chicago, Springfield & St. Louis Railroad Company.

LITCHFIELD, ILLS., *April 29th*, 1885.

The board of directors met, pursuant to adjournment and call, at the office of the company, in the city of Litchfield, Ills., at 11 o'clock a. m., on the 29th day of April, 1885, and there were present Messrs. Hunter, Black, Keiser, Beach, Thomas, and McLean; the president in the chair.

The secretary read the minutes of the last meeting of the
200 board, which were approved.

Mr. D. L. Wing, president of the Empire Construction —, and in behalf of said company, offers the board of directors a contract to build the said Chicago, Springfield & St. Louis railroad; which, on motion of H. H. Beach, is referred to the executive committee to fill out and present to the board at a later hour of this day. On motion of H. H. Beach, no one dissenting, the board adjourned till 2 o'clock p. m.

Board of directors met pursuant to adjournment.
There were present the same as at the morning meeting.

On motion of G. N. Black, the contract made by the Empire Construction Company with Robert McWilliams, attorney, is accepted by this board; which said contract is in the words and figures as follows, to wit:

Duplicate

LITCHFIELD, ILLINOIS, *April 7th*, 1885.

The Empire Construction Company and the Chicago, Springfield and St. Louis R. R. have this day retained Robert McWilliams in all their business, joint and several, for the period of one year, as their attorney. They have paid a retainer fee of fifty (50) dollars, and he is to be actively engaged in all their business and to receive additional fees, reasonable in amount, for all business to be done for

one or both of said companies above named, for which both companies are responsible jointly and severally.

EMPIRE CONSTRUCTION CO.,
By D. L. WING, *President.*
CHICAGO, SPRINGFIELD & ST. LOUIS R. R. CO.,
By JOHN A. HUNTER, *Pres't.*

C. H. WING.
[SEAL.]
JNO. J. McLEAN, *Sec'y.*

201 On motion of G. N. Black, seconded by L. H. Thomas, the contract which was previously referred to the executive committee and now presented by said committee, and being read by the secretary, the same is approved and accepted by this board; which said contract is in the words and figures following, to wit:

Contract.

These articles of agreement made and entered into this twenty-ninth day (29th) of April, A. D. 1885, by and between the Empire Construction Company, a corporation of the State of Illinois, party of the first part, and the Chicago, Springfield & St. Louis Railroad Company, a railroad corporation of the same State, party of the second part, witnesseth:

That, for and in consideration of the covenants and payments hereinafter recited to be made by said party of the second part, said party of the first part for itself, itssuccessors and assigns, covenants and agrees to furnish all the materials and labor necessary to construct, iron, bridge and complete the railroad of the said party of the second part, as now surveyed as designated on a map filed in the office of the party of the second part.

Which railroad commences at a point on the Ohio and Mississippi railroad, in the city of Springfield in the State of Illinois, and extends by way of Litchfield to a point to be selected on the Toledo, Cincinnati and St. Louis railroad, within fifteen (15) miles of a point known as Alhambra, on the line of said road, a whole dis-
202 tance of about seventy (70) miles, passing through the city of Litchfield, State of Illinois, with two and one-half ($2\frac{1}{2}$) miles of side tracks, and to furnish said road with depots, water tanks, bridges and turn-tables, according to map of said Chicago, Springfield & St. Louis railroad which is hereby referred to and made a part of this contract as the said map is now on file in the office of the secretary of said Chicago, Springfield & St. Louis Railroad Company and according to the specifications hereinafter mentioned.

Specifications.

I. Said railway shall be constructed and completed as nearly as may be practicable on the line designated on said map.

II. Said railway and every part of it as hereinbefore named, is to

be constructed in a good, substantial and workmanlike manner, observing such grades and degrees of curvature as are indicated on said map as near as may be practicable.

III. Grading.—All embankments to be completed to a uniform width of fourteen (14) feet at subgrade, with side slopes of one and one-half (1½) feet vertical to one (1) foot horizontal; all excavations of earth to be completed to a uniform width of twenty (20) feet at subgrade with adequate side ditching and side slopes of one and one-half (1½) feet vertical to one foot horizontal. All rock excavations to be completed to a uniform width of fourteen feet (14) at subgrades with side slopes of one-quarter of a foot (¼) vertical to one foot horizontal.

IV. Bridging.—In all cases where span truss bridge shall
203 be required ordinary wooden or combination (wood and iron) Howe's truss shall be constructed; the workmanship and materials of which shall be first-cla*ll*, such spans and trusses shall rest and be secured at each end upon piling, which shall consist of sound white, burr or chestnut oak timber, to be driven to such depths and so secured and constructed above the *service* as to provide substantial and secure bearing of wood for such span or truss.

When practicable and expedient and such stone may be had without difficulty, the piers or abutments shall be constructed of first-class stone masonry to be laid in cement. All trestle-work to be built of sound white, burr or chestnut oak or pine timber, free from decay, the bents of which shall contain two (2) perpendicular and two battered posts with proper top and bottom and subsill, all of which shall be of timber one (1) foot square sawed or well hewn on four (4) sides: except such bottom and subsills which may be faced on two (2) sides only, including such suitable trusses, stringers and cross-ties (of wood), iron bolts and washers as may be required. The distance from centre to centre of joining bents not to be greater than fifteen (15) feet.

V. Cross-ties.—To be composed of good white, burr or chestnut oak to be sawed or evenly hewn on two (2) sides of uniform length of eight (8) feet not less than six (6) inch face for hewn ties and seven (7) *faces* for sawed ties, to be evenly distributed and put in
204 place, at the rate of not less than two thousand six hundred and forty (2,640) per mile, either on main road or side tracks.

VI. Track-laying.—The track shall be laid to a *guage* of four (4) feet, eight and a half (8½) or nine (9) inches between the rails, to consist of first quality of "T" rails of steel weighing not less than sixty (60) pounds per yard with improved angle splice bars properly and substantially secured and spiked to be laid to proper surface of alignment and regularity of curvature: the siding, switches, and turnouts may be laid with steel "T" rails, weighing not less than fifty (50) pounds per yard with ordinary splice bars.

VII. Ballast—To consist of sand, gravel and such other suitable material, except stone as can be conveniently obtained along the line of said Chicago, Springfield & St. Louis railroad which shall be

evenly distributed and in quantity not less than seventeen hundred and sixty (1,760) cubic yards per mile.

VIII. Stations and depots.—Three (3) first-class stations on said line, and three second-class stations on said line shall be built at the places now designated on the said map hereinbefore referred to, or in the event that the Chicago, Springfield & St. Louis Railroad Company shall desire to have said stations hereinbefore mentioned built at any other points than those designated on said map then the said party of the first part shall build such stations in this article provided for at such point or points as may be designated by the said Chicago, Springfield & St. Louis Railroad Company.

The first-class stations to be built as per specifications by engineer not to cost less one thousand dollars ($1,00-) each (passenger
205 and freight combined) and the others to cost not less than six hundred dollars ($600) each.

Also three (3) section-houses according to the direction of chief engineer to cost not less than fifty dollars ($50) each.

IX. Water tanks and turn-tables.—There are to be three (3) water tanks and two (2) turn-tables, placed at the points designated on said map. The water tanks and pumps to be per specifications by engineer not to cost less than twelve hundred dollars ($1,200) each, and two (2) turn-tables to be as directed by engineer not to cost less than twelve hundred dollars ($1,200) each.

And it is agreed between the — hereto that the party of the first part shall have the right to take possession of, use and control and employ in the construction and completion of said railway all materials and property placed or located along the line of said road and now owned or hereafter to be owned by said party of the second part, free of charge, and to maintain such possession and use until the full completion of this contract.

The said party of the first part further agrees and covenants to promptly pay all persons performing labor or furnishing materials stipulated for, or furnishing board to party of the first part or to subcontractors employed by them, or either of them in furnishing materials for the construction of said railway, the amounts due them from time to time on such account and to save harmless and fully protect and indemnify said party of the second part, its successors and assigns from all liens which such person may be entitled to take or perfect upon the property of the said second
206 party or any part thereof by virtue of the laws of the State of Illinois in force for that purpose.

X. Right of way.—Said first party further covenants and agrees to procure, provide and furnish and have conveyed to or condemned for said second party all such unsecured rights of way or tracks and depots herein provided for as in and upon said map shown and herein specified; but to this end the said first party shall have credit and benefit hereunder of all donations and contributions from others of — for account of said right of way or depots pertaining thereto and all work already done on said line of road.

Said party also agrees that it will begin the construction of said railway within sixty (60) days after the date of this contract, and

fully complete the same from Springfield, Illinois, to Litchfield, Illinois, as herein provided for, within fourteen months (14) from May first (1st) A. D. 1885, and the balance within two years (2) thereafter; and upon the final completion of said road as herein agreed for turn over said railway so finished to the said party of the second part, its successors and assigns in good order.

And for and in consideration of said covenants and agreements by said party of the first part to be performed said party of the second part herein covenants, promises and agrees to pay said party of the first part, its successors or assigns as follows: In negotiable bonds of said party of the second part to be issued as hereinafter provided for, seven hundred thou-
207 sand dollars ($700,000) at the par value of said bonds and nine hundred and ninety thousand dollars ($990,000) in its capital stock at par by proper certificates therefor paid up and non-assessable in the manner following, that is to say: All of said bonds and stocks shall be issued by said company without unnecessary delay, the bonds to be dated the first (1st) day of May, A. D. 1885, and numbered from one (1) to seven hundred (700) inclusive, each of the denomination of one thousand dollars ($1,000) payable thirty (30) years after date in gold, with six (6) per cent. per annum interest, gold, payable semi-annually on coupons to be attached, both principal and interest payable in the city of New York, State of New York, at the American Exchange National bank; and all secured by a good and sufficient deed of trust, and mortgage in good form duly executed by said company upon all its property real and personal, owned by it or hereafter to be a-quired, including its franchises of every kind; and said bonds and stocks shall be delivered and transferable to said party of the first part as follows: When said bonds and mortgage are executed as herein agreed (the said seven hundred thousand dollars ($700,000) in bonds and the said nine hundred and ninety thousand dollars ($990,000) in certificates of stock) they shall all be delivered and placed in the hands of the Central Trust Company of New York City, State of New York, as trustee irrevocably, and with authority and discretion unto said trustee to issue and deliver same as follows, to wit:

Whereas: The Empire Construction Company is now in the
208 possession and control of fifty thousand dollars in bonds and one hundred and sixty thousand dollars in certificates of stock issued to said Empire Construction Company, by the party of the second part under a contract entered into by the parties hereto, namely, the Empire Construction Company and the Chicago, Springfield & St. Louis Railroad Company, of the date of March the third (3rd) A. D. 1883, and which contract is by the consent of the parties to that contract, viz: the Empire Construction Company and the the Chicago, Springfield & St. Louis Railroad Company annulled and rescinded and held for naught and this contract made in lieu thereof and the said bonds and stocks heretofore delivered to the Empire Construction Company under said contract of March the third (3rd) A. D. 1883, is to be surrendered and delivered up to the said Chicago, Springfield & St. Louis Railroad Company for cancel-

lation and on the delivery of bonds and stock with the coupons attached to such bonds then the said trustee, the Central Trust Company of New York City, New York, shall deliver to the said Empire Construction Company an amount of the capital stock of the said party of the second part, equal to the amount of the bonds and capital stock surrendered up for cancellation as herein provided.

And whereas: The said Empire Construction Company under said contract of date of March third (3rd) A. D. 1883, performed certain work under said contract to an amount undetermined; it is stipulated and agreed by the parties hereto, namely, the Empire Construction Company and the Chicago, Springfield and St. Louis Railroad Company that the amount and value
209 of the work so done under said contract of March third (3rd) A. D. 1883, shall be ascertained and determined by the executive committee of the board of directors of the said Chicago, Springfield and St. Louis Railroad Company and which said executive committee shall determine the same from vouchers of the said The Empire Construction Company showing such expenditures for work done and material furnished under contract of March third (3rd) A. D. 1883, as aforesaid, and on the account of same being determined by said executive committee as aforesaid, such executive committee shall report the same to the board of directors of the Chicago, Springfield and St. Louis Railroad Company; and if the same be approved, shall be certified by the secretary of said Chicago, Springfield & St. Louis Railroad Company to the said trustee of the said Central Trust Company of New York City, New York, and such trustee of the Central Trust Company of New York City, New York, shall thereupon deliver of the bonds of this, the said Chicago, Springfield & St. Louis Railroad Company eighty (80) per cent. of the same so certified to the Empire Construction Company.

It is hereby understood and agreed that the said party of the first part is to be paid for the construction of the said Chicago, Springfield & St. Louis railroad at the rate of ten thousand dollars ($10,000) per mile in bonds and fourteen thousand dollars ($14,000) in certificates of capital stock for each and every mile thereof.

It is further stipulated and agreed that of the said sum of ten thousand dollars ($10,000) per mile to be paid said Empire
210 Construction Company by the said Chicago, Springfield & St. Louis Railroad Company per the contract to the said Chicago, Springfield and St. Louis Railroad Company as hereinbefore provided on the completion of each one-half (½) mile of said Chicago, Springfield and St. Louis railroad in accordance with the provisions of this contract and the acceptance of the same by the executive committee of the Chicago, Springfield and St. Louis Railroad Company which shall be evidenced by the certificate of the chief engineer of said party of the second part made to the said executive committee, and upon the same being accepted by the said executive committee of said Chicago, Springfield and St. Louis railroad, shall issue a certificate that the said Empire Construction Company is entitled to receive pay at the rate provided for the construction of each one-half (½) mile so constru-ted and accepted; and upon such

certificate being received by the trustee aforesaid, the Central Trust Company of New York City, the said trustee shall issue to the Empire Construction Company, bonds in the sum of four thousand dollars ($4,000) and certificates of stock in the sum of seven thousand dollars ($7,000) for each half mile so certified as accepted, and such certificate or certificates shall be sufficient receipt and acquittance to said Central Trust Company of the amount it shall so pay. And upon the receipt by said trust company of the chief engineer's and president's certificate that the said road has been completed as hereinbefore agreed for, said trust company shall deliver to the said party of the first part all the balance of the bonds and stock not before that time delivered and held in trust by said trust company under the terms of this contract; and said trustee shall there-
211 upon be fully discharged from this trust.

It is expressly understood and agreed that said party of the second part shall not increase its capital stock above that which it is now authorized to have until the expiration of one (1) year after the completion of the said Chicago, Springfield and St. Louis railroad herein specified, and shall not make or issue or sell, any other of its bonds than as herein provided for, without consent, of said party of the first part.

It is further agreed between the parties hereto that during the construction and until the completion of this railroad in accordance with this contract, the party of the first part for the purpose of construction shall have the right to the full and free possession, use and control of said railway.

And it is hereby further provided that whenever bonds are delivered to the party of the first part by said trustee, all interest on said bonds so delivered up to the day of delivery shall be credited on the coupons on which the same may have accrued.

And coupons maturing according to their terms before issue and delivery of any of said bonds by said trustee as hereinbefore provided shall be detached and cancelled.

Whenever the line of the road in beginning, route or termination as described in this contract is different from the may of this road hereinbefore referred to, all the conditions and terms of this agreement shall as to such beginning, route and termination be the same as hereinbefore agreed to, and any change may be made in beginning, route or termination of said road on the certificate of the chief engineer and the approval of the executive committee of the party of the second part.

212 And thereupon all the terms and conditions of this agreement shall as to said route as modified be the same as hereinbefore agreed to.

It is further agreed that the covenants and agreements of this contract shall be binding and extend to the successors and assigns of the parties hereto respectively.

It is also stipulated and agreed that the said Empire Constru-tion Company shall have the right to use the name of the railroad company for all purposes of proceedings for the condemnation of lands or right of way, but said Empire Construction Company is to pay

all costs and save and keep harmless the said Chicago, Springfield and St. Louis Railroad Company from all loss, cost or damage by reason of such condemnation proceedings being had in the name of said railroad company.

In witness whereof, the said Empire Construction Company and the said Chicago, Springfield and St. Louis Railroad Company have subscribed by their respective presidents and caused their corporate seals to be hereto affixed, attested by their respective secretaries in triplicate on the day and year first above written.

EMPIRE CONSTRUCTION COMPANY.

Attest: —— ——, *Secretary.*

CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD CO.,

[SEAL.] By JOHN A. HUNTER, *President.*

JOHN J. McLEAN, *Secretary.*

Mr. Geo. N. Black offered the following resolution, which was
213 unanimously adopted:

"Resolved, That the president and secretary of this company be authorized, and they are hereby instructed, to execute in legal form and deliver the said contract to the Empire Construction Company."

On motion of Geo. N. Black, no one dissenting, the board adjourned *sine die.*

JOHN A. HUNTER, *President.*

JOHN J. McLEAN, *Secretary.*

Special Board Meeting.

LITCHFIELD, ILLS., *May* 14, 1885.

The board of directors of the Chicago, Springfield and St. Louis Railroad Company met pursuant to call of the president at the company's office in the city of Litchfield, Ills., on the 14th day of May, A. D. 1885, at 11 o'clock a. m.

There were present Messrs. Hunter, Black, Beach, Keiser, and McLean.

The president called the meeting to order and the secretary read the minutes of the last meeting of the board, which were approved, with corrections following:

On motion of Mr. Geo. N. Black, the following changes were ordered to be made in the contract previously made by and between the Empire Construction Company and the Chicago, Springfield and St. Louis Railroad Company, viz:

That part of said contract under head of "Stations and depots," sec. VIII, be corrected so as to read "to cost not less" instead
214 of "not to exceed a cost of," and that part of said contract which reads "ten thousand dollars ($10,000) per mile and for each and every mile thereof" is to be corrected so as to read "ten thousand dollars per mile in bonds and fourteen thousand

dollars ($14,000) in — certificate of capital stock;" and also that part of said contract which makes the "Central Trust Company" on New York City, New York, the trustee, is ordered changed so as to make the "Mercantile Trust Company" of New York City, N. Y., the trustee under said contract.

On motion of H. H. Beach, the trust under said contract is ordered transferred to the Mercantile Trust Company, New York city, New York.

On motion of Mr. Keiser, no one dissenting, the board adjourned *sine die*.

JOHN A. HUNTER, *President.*

JOHN J. McLEAN, *Secretary.*

Board Meeting.

At a meeting of the board of directors of the Chicago, Springfield and St. Louis Railroad Company held at the company's office in Litchfield, Illinois, on Tuesday, May 26th, A. D. 1885.

There were present Geo. N. Black, H. H. Beach, C. J. Keiser, L. H. Thomas, and John J. McLean, secretary.

On motion, the secretary read minutes of last meeting, which were approved.

The resignation of John A. Hunter, president and director of this company, was read by the secretary, which, in words and figures, was as follows:

215 ST. LOUIS, MO., *May* 23, 1885.

Mr. John J. McLean, sec't'y Chicago, Springfield and St. Louis Railroad Company, Hillsboro, Ills.

DEAR SIR: I hereby resign as president and director of above-named railroad Co., to take effect at once.

Yours respectfully, JOHN A. HUNTER.

On motion of H. H. Beach, the resignation of John A. Hunter as president and director of this company was accepted.

On motion of H. H. Beach, C. C. Brown, a stockholder of this company, was nominated for an election in place of John A. Hunter, resigned, and, no one objecting, he was unanimously elected director of this company.

Thereupon it was moved by C. J. Keiser that this board do now proceed to the election of a president in place of John A. Hunter, resigned; which motion is unanimously carried.

On motion of L. H. Thomas, Geo. N. Black was put in nomination for president in place of John A. Hunter, resigned; which motion being put by the secretary, Geo. N. Black was unanimously elected president of the board of directors of this company.

On motion of H. H. Beach, C. J. Keiser was unanimously elected vice-president in place of Geo. N. Black elected president.

A communication was read from the Empire Construction Company which was in words and figures as follows, to wit:

Whereas a contract was entered into by and between the Empire Construction Company, of the one part, and the Chicago,
216 Springfield and St. Louis Railroad Company, of the other part, by and under which the Empire Construction Company undertook to build the said railroad, and which said contract was entered into on the 29th day of April, A. D. 1885, and this company now desires to re-cind, vacate, and set aside that contract:

Therefore resolved, That the Chicago, Springfield and St. Louis Railroad Company be requested to re-cind, vacate, annul, and set aside the contract by it entered into with this company on the 29th day of April, A. D. 1885, and the same held as if it had never been entered into.

Resolved, That the Chicago, Springfield and St. Louis Railroad Company be notified of this resolution, and a copy of the same be furnished that company, and that said company be requested to take action thereon and notify this company of its action thereon.

And thereupon the following resolution was offered by H. H. Beach, with preamble in words and figures following, viz:

Whereas a resolution with preamble in words and figures following, viz:

Whereas a contract was entered into by and between the Empire Construction Company, on the one part, and the Chicago, Springfield and St. Louis Railroad Company, of the other part, by and under which the Empire Construction Company undertook to build the said railroad, and which contract was entered into on the 29th day of April, A. D. 1885, and this company now desires to re-cind, vacate, and set aside that contract:

Therefore resolved, That the Chicago, Springfield and St. Louis Railroad Company be requested to re-cind, vacate, and set —
217 the contract by it entered into with the company on the 29th day of April, A. D. 1885, and the same held as if it had never been entered into.

Resolved, That the Chicago, Springfield and St. Louis Railroad Company be notified of this resolution and a copy of same be furnished that company, and that said company be requested to take action thereon and notify this company of its action thereon.

I, C. H. Wing, secretary of said Em. Con. —, do hereby certify that the above is a true copy of a resolution passed this day, May 26th, 1885.

C. H. WING, *Secretary.*

Therefore resolved, That the said proposition be accepted as proposed and the contract entered into by this company with the Empire Construction Company of date April 29th, 1885, be vacated, annulled, and set aside and held for naught to the same extent and as fully as if said contract had never been made and entered into.

Resolved, That the Empire Construction Company be notified of the acceptance of its proposition to vacate and set aside the contract entered into by this company with the Empire Construction Company of date April 29th, 1885; which resolution was unanimously adopted by the board of directors.

And thereupon it was una-*mi*ously resolved by the board that this meeting adjourn *sine die.*

GEO. N. BLACK, *President.*

JOHN J. McLEAN, *Secretary.*

218 *Board Meeting.*

The board of directors of the Chicago, Springfield and St. Louis Railroad Company met pursuant to notice of the secretary in writing in words and figures following, to wit:

HILLSBORO', ILLS., *Dec. 15th*, 1886.

(Name), Esq., director C., S. & St. Louis R. R. Co. (address).

DEAR SIR: There will be a special meeting of the board of directors of the Chicago, Springfield and St. Louis Railroad Company held at the office of Messrs. Southworth & Atterbury, in the city of Litchfield, Montgomery county, Illinois, at 9 o'clock a. m., Monday, December 20th, 1886, for the purpose of devising means to pay the company's indebtedness and to arrange for the closing up of the company's business.

(Signed) JOHN J. McLEAN, *Secretary.*

GEO. N. BLACK, *President.*

Which said meeting was held at the office of Messrs. Southworth & Atterbury, in the city of Litchfield, Illinois, on December 20th, 1886, at 9 o'clock a. m. There were present Geo. N. Black, Christopher C. Brown, Lewis H. Thomas, Henry H. Beach, and John J. McLean.

On motion, the minutes of the last meeting *was* read and approved.

Christopher C. Brown offered the following resolution, which in words and figures *are* as follows, to wit:

"Resolved, That Geo. N. Black, the president of this road, is hereby authorized to employ counsel to take such action as may be necessary, by suit or otherwise, to protect the holders of the
219 50,000 bonds issued by this company, and also the creditors and stockholders of this company;" which resolution was unanimously carried and so declared by the following vote on call of ayes and noes:

George N. Black, aye; Christopher C. Brown, aye; L. H. Thomas, aye; H. H. Beach, aye, and John J. McLean, aye.

The following resolution was offered by C. C. Brown and was carried and so declared on the following vote of ayes and noes:

Geo. N. Black, aye; Christopher C. Brown, aye; H. H. Beach, aye; L. H. Thomas, no; John J. McLean, aye:

Resolved, That the secretary of this company is hereby directed to refuse all applications to transfer on books of the company any stock issued to Empire Construction Company, the said company having procured same through fraud and having also abandoned their contract to build the road, greatly to the damage of this com-

pany, and by reason of said abandonment the contract is hereby annulled, and the president is hereby authorized to bring suit against said Empire Construction Company if he shall ascertain that said company is able to respond in damages to this company.

The following resolution was offered by C. C. Brown and was carried and so declared by the following vote on call of ayes and noes:

"Resolved, That in addition to the powers conferred on Geo. N. Black, the president, in a former resolution this day passed, that he is hereby authorized (if he thinks best for the interests of the creditors and stockholders after looking into the affairs of the company) to wind up the affairs by such legal proceedings as will secure all their rights."

220 On motion, board adjourned till 1½ o'clock p. m.

Board met pursuant to adjournment. Same members present as in the forenoon.

Bill of J. J. McLean presented and, on motion, was allowed, said bill being in words and figures as follows, to wit:

LITCHFIELD, *Dec. 20th*, 1886.

The Chicago, Springfield & St. Louis Railroad Company, Dr.

To John J. McLean, for services as secretary of said railroad company for 1⅔ years, at the rate of one hundred and fifty dollars per year, to date, two hundred and fifty dollars.

On motion of H. H. Beach, the minutes of this meeting were ordered to be read by the secretary, which was done and the same *was* approved.

On motion of C. C. Brown, the board adjourned *sine die*.

GEO. N. BLACK, *President*.

JOHN J. McLEAN, *Secretary*.

221 EXHIBIT 5.

In the Circuit Court of the U. S., Southern District of Illinois.

BELLE N. B. WADE
vs.
CHICAGO, SPRINGFIELD & ST. LOUIS R. R. Co. *et al.*

To the above-named defendants:

You will please produce before L. L. Walbridge, special master, on the twelfth inst., at Litchfield, Illinois, the following pages, &c.:

1st. Maps and profiles of the Chicago, Springfield & St. Louis Railroad Company.

2nd. Original contract between Chicago, Springfield & St. Louis R. R. Co. and Empire Construction Company.

3rd. The deed of conveyance and deed of sale from the Empire Construction Co. to H. H. Cooley & Co.

4th. All surveys, contracts, profiles, books referred to in said conveyance, said conveyance being of date May 26th, 1885.

5th. Conveyance by H. H. Cooley & Co. to St. Louis & Chicago Railway Co., dated May 26th, 1885.

6th. Deed by Empire Construction Company to H. H. Cooley & Co., bearing date June 12th, 1886.

7th. Conveyance by H. H. Cooley & Co. to Litchfield & St. Louis Railroad Co., dated June 12th, 1886.

8th. All maps, profiles, surveys, contracts for right of way referred to in said two last-named conveyances.

Otherwise the plaintiff will offer secondary evidence of the contents of above-named instruments.

Jan'y 9th, 1886.

HOUGH, OVERALL & JUDSON.
BROWN, WHEETER & BROWN.

222 In the Circuit Court of the U. S. for the Southern District of Illinois.

BELLE N. B. WADE *et al.*, Assignees, &c.,
vs.
CHICAGO, SPRINGFIELD & ST. LOUIS R. R. *et al.*

And now, on this fourth day of January, A. D, 1888, come the complainants, by Brown, Wheeter & Brown, their solicitors, and the defendants, by Clinton L. Conkling, Esq., their attorney, and, by agreement, Mr. L. L. Walbridge is hereby appointed special master and authorized to proceed to take the testimony of such witnesses as may be introduced by the complainants on the twelfth (12th) day of January inst., at the office of Southworth & Atterbury, in Litchfield, Montgomery Co., Ills., beginning at nine o'clock a. m., and also to proceed on the thirteenth (13th) of January inst. to take the testimony of such witnesses as may be produced by the complainants at St. Elmo, in Fayette county, Ill., beginning at nine o'clock a. m.

That he take said testimony in accordance with the laws of the State of Illinois, and that he certify and return the same under seal to the clerk of this court without unnecessary delay.

W. J. ALLEN,
Dist. J., S. Dist. Ill.

A true copy.

JAMES T. JONES, *Clerk.*

223 Counsel for the defendant- objects to all these offers of proof on the ground of irrelevancy and incompetency.

Counsel for the complainant- next offers in evidence notice served upon counsel for the defendants to produce certain papers and documents, as follows (marked Exhibit 5):

First. Copies and profiles of the Chicago, Springfield & St. Louis Railroad Company.

Mr. CONKLING: As attorney for the defendants I will state the foregoing notice was served upon me on the afternoon of January 9th, 1888, and the time has been too short for me to obtain some of

pany, and by reason of said abandonment the contract is hereby annulled, and the president is hereby authorized to bring suit against said Empire Construction Company if he shall ascertain that said company is able to respond in damages to this company.

The following resolution was offered by C. C. Brown and was carried and so declared by the following vote on call of ayes and noes:

"Resolved, That in addition to the powers conferred on Geo. N. Black, the president, in a former resolution this day passed, that he is hereby authorized (if he thinks best for the interests of the creditors and stockholders after looking into the affairs of the company) to wind up the affairs by such legal proceedings as will secure all their rights."

220 On motion, board adjourned till 1½ o'clock p. m.

Board met pursuant to adjournment. Same members present as in the forenoon.

Bill of J. J. McLean presented and, on motion, was allowed, said bill being in words and figures as follows, to wit:

LITCHFIELD, *Dec. 20th*, 1886.

The Chicago, Springfield & St. Louis Railroad Company, Dr.

To John J. McLean, for services as secretary of said railroad company for 1⅞ years, at the rate of one hundred and fifty dollars per year, to date, two hundred and fifty dollars.

On motion of H. H. Beach, the minutes of this meeting were ordered to be read by the secretary, which was done and the same *was* approved.

On motion of C. C. Brown, the board adjourned *sine die*.

GEO. N. BLACK, *President*.

JOHN J. McLEAN, *Secretary*.

221 EXHIBIT 5.

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BELLE N. B. WADE
vs.
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To the above-named defendants:

You will please produce before L. L. Walbridge, special master, on the twelfth inst., at Litchfield, Illinois, the following pages, &c.:

1st. Maps and profiles of the Chicago, Springfield & St. Louis Railroad Company.

2nd. Original contract between Chicago, Springfield & St. Louis R. R. Co. and Empire Construction Company.

3rd. The deed of conveyance and deed of sale from the Empire Construction Co. to H. H. Cooley & Co.

4th. All surveys, contracts, profiles, books referred to in said conveyance, said conveyance being of date May 26th, 1885.

5th. Conveyance by H. H. Cooley & Co. to St. Louis & Chicago Railway Co., dated May 26th, 1885.

6th. Deed by Empire Construction Company to H. H. Cooley & Co., bearing date June 12th, 1886.

7th. Conveyance by H. H. Cooley & Co. to Litchfield & St. Louis Railroad Co., dated June 12th, 1886.

8th. All maps, profiles, surveys, contracts for right of way referred to in said two last-named conveyances.

Otherwise the plaintiff will offer secondary evidence of the contents of above-named instruments.

Jan'y 9th, 1886.

HOUGH, OVERALL & JUDSON.
BROWN, WHEETER & BROWN.

222 In the Circuit Court of the U. S. for the Southern District of Illinois.

BELLE N. B. WADE *et al.*, Assignees, &c.,
vs.
CHICAGO, SPRINGFIELD & ST. LOUIS R. R. *et al.*

And now, on this fourth day of January, A. D, 1888, come the complainants, by Brown, Wheeter & Brown, their solicitors, and the defendants, by Clinton L. Conkling, Esq., their attorney, and, by agreement, Mr. L. L. Walbridge *in* hereby appointed special master and authorized to proceed to take the testimony of such witnesses as may be introduced by the complainants on the twelfth (12th) day of January inst., at the office of Southworth & Atterbury, in Litchfield, Montgomery Co., Ills., beginning at nine o'clock a. m., and also to proceed on the thirteenth (13th) of January inst. to take the testimony of such witnesses as may be produced by the complainants at St. Elmo, in Fayette county, Ill., beginning at nine o'clock a. m.

That he take said testimony in accordance with the laws of the State of Illinois, and that he certify and return the same under seal to the clerk of this court without unnecessary delay.

W. J. ALLEN,
Dist. J., S. Dist. Ill.

A true copy.

JAMES T. JONES, *Clerk.*

223 Counsel for the defendant- objects to all these offers of proof on the ground of irrelevancy and incompetency.

Counsel for the complainant- next offers in evidence notice served upon counsel for the defendants to produce certain papers and documents, as follows (marked Exhibit 5):

First. Copies and profiles of the Chicago, Springfield & St. Louis Railroad Company.

Mr. CONKLING: As attorney for the defendants I will state the foregoing notice was served upon me on the afternoon of January 9th, 1888, and the time has been too short for me to obtain some of

the articles mentioned or papers mentioned in the notice. We have searched, and as — the first item, the maps and profiles of the Chicago, Springfield & St. Louis Railroad Company, we have not been able to find them, but we are informed that a portion of the same were removed from the office of the Chicago, Springfield & St. Louis Railroad Company, in Litchfield, by parties other than those connected with this suit, and that the probabilities are that the major part of these are beyond our control, but there are some papers in the city of Charleston which we have been unable to examine for the reason of lack of time, and cannot say positively but what they may be found among these.

Second. As to the second item, the original contract between the Chicago, Springfield & St. Louis Railroad Company and the Empire Construction Company, we will introduce and produce the same.

Third. The deed of conveyance and deed of sale from the Empire Construction Company to H. H. Cooley & Co.; that in not in
224 the possession of the defendants, nor do they know where it is.

Fourth. All surveys, contracts, profiles, and books referred to in said conveyance of date May 26th, 1885. The defendants cannot state accurately where those contracts, profiles, and books referred to are, they having no access to them within the time limited.

Fifth. Conveyance by H. H. Coolyu & Co. to the St. Louis & Chicago Railroad Company, May 26th, 1885. We have not yet obtained this and I do not know, as counsel for the company, just where it is. The officer who is supposed to have had it was away part of the time, and we have not had an opportunity to search for it where it should be.

Sixth. Deed by the Empire Construction Company to H. H. Cooley & Co., bearing date June 12th, 1886. That is not in our possession or control.

Seventh. Conveyance by H. H. Cooley & Co. to the Litchfield & St. Louis Railroad Company, dated June 12th, 1886. The same statement as to item five is made as to this item.

Eighth. All maps, profiles, surveys, and contracts for right of way referred to in said two last-named conveyances. The same answer is made to that as to the fourth item referred to.

Mr. JUDSON: Counsel for complainant- have served notice upon defendant- to produce the original deeds as above. I now offer in evidence certified copies from the records of the recorder's office of Montgomery county, Illinois, of the following conveyances:

1st. ——

225 Counsel for the defendant- objects both to the form of the paper and its execution, and also on the ground of irrelevancy and incompetency and to the manner of certification.

Counsel for the complainant- next offers in evidence a conveyance from H. H. Cooley & Co. to the St. Louis & Chicago Railroad Company, executed May 26th, 1885, acknowledged May 29th, 1885, and

recorded June 1st, 1885, in the recorder's office of Montgomery county, 9 o'clock a. m., Book 47, page- 99 and 100.

(The same marked Exhibit 7.)

Counsel for the defendant- objects as heretofore.

Complainants' counsel next offers in evidence conveyance by the Empire Construction Company to H. H. Cooley & Co.; executed June 12th, 1886; D. L. Wing, president of the Empire Construction Company; attested by the seal of the company; C. H. Wing, secretary; acknowledged June 12th, 1886; recorded in the recorder's office of Montgomery county, July 26th, 1886, at 9.45 p. m., in Miscellaneous Record No. 3, pages 476, '7; also conveyance by H. H. Cooley & Co. to the Litchfield & St. Louis Railroad Company, bearing date June 12th, 1886, acknowledged June 12th, 1886, and recorded July 26th, 1886, in the recorder's office of Montgomery county, 9.50 o'clock p. m., in Miscellaneous Record No. 3, page 478.

Defendants' counsel objects to the two last offers on the ground of immateriality and informality in the execution, and also to the manner of certification.

Counsel for the complainant- states that he will offer evidence hereafter as to the date of the recording of the four above-named conveyances in the counties of Sangamon, Macoupin, Madison, and St. Clair.

226 1st. A conveyance from the Empire Construction Company to H. H. Cooley & Company; executed by the Empire Construction Company, by D. L. Wing, as president; attested by the seal of the company; C. H. Wing, as secretary; bearing date May 26th, 1885; acknowledged May 26th, 1885; recorded in the recorder's office of Montgomery county May 27th, 1885, at four o'clock p. m., in Book 47, on pages 96, 97, 98.

(The same is marked Exhibit 6.)

227 EXHIBIT No. 6.

In consideration of the sum of one hundred and forty-two thousand and fifteen & $\frac{11}{100}$ dollars in hand paid to the Empire Construction Company and by virtue of the following resolutions of the board of directors of the Empire Construction Company, viz:

Resolved, That in consideration of the sum of one hundred and forty-two thousand and fifteen & $\frac{11}{100}$ dollars to this company in ha-d paid by H. H. Cooley & Co. all the real estate and personal property, rights, credits, and easements of the Empire Construction Company —, and the president and secretary of this company *is* hereby authorized to execute good and sufficient deeds and bills of sale for the conveyance of said property to H. H. Cooley & Co. in this schedule hereto attached, viz:

Expended for engineering	4,672	95
" ac. right of way	4,685	40
" " cross-ties	2,646	00
" " construction	72,134	22
" " miscellaneous	16,872	56

Right of way guaranteed	19,000 00
" " " contracted	12,000 00
Special value Litchfield right of way	10,000 00
Total	$142,015 11

Being only that part north of the Indianapolis and St. Louis railroad, we do hereby convey all right of way acquired by the Empire Construction Company for the Chicago, Springfield and St. Louis Railroad Company between Litchfield, Ills., and Spring-
228 field, Ills., estimated, as per vouchers, to be of the value of forty-seven hundred eighty-five and $\frac{40}{100}$ ($4,785.40) dollars; all cross-ties between Litchfield, Ills., and Springfield, Ills., on the side of survey made for the Chicago, Springfield and St. Louis Railroad Company, estimated to be of the value of twenty-five hundred and forty-six (2,546.00) dollars, as per vouchers; all embankments, excavations, trestle-work, tiling, and all other work done in the building and construction of a railroad on the line of survey between Litchfield, Ills., and Springfield, Ills., done and constructed by the Empire Construction Company, estimated to be of the value of and cost, as per vouchers, *at* seventy-two thousand one hundred and thirty-four and $\frac{22}{100}$ ($72,134.22) dollars; all contracts for right of way guaranteed the Empire Construction Company for the Chicago, Springfield & St. Louis Railroad Company, estimated, as per vouchers or exhibits, — nineteen thousand ($19.000) dollars; all right of way contracted for *for* the Chicago, Springfield and St. Louis Railroad Company by the Empire Construction Company, estimated, as per vouchers, statements, or exhibits, at twelve thousand ($12,000.00) dollars; all the right of way in Litchfield acquired by the Empire Construction Company for the right of way of the Chicago, Springfield and St. Louis Railroad Company, estimated as of value of ten thousand ($10,000.00) dollars; all engineering services and engineering in tile construction, location, surveys, and estimates and superintendence of construction in the work done between Litchfield, Ills., and Springfield, Ills., as per vouchers, forty-six hundred seventy-two & $\frac{93}{100}$ ($4,672.93) dollars; all estimates,
229 rights, and advantages accrued to the Empire Construction Company by reason of any contract heretofore existing and all rights in the Empire Construction Company resulting from work done, material furnished, money expended, and included in the term miscellaneous, as per vouchers, sixteen thousand eight hundred and seventy-six and $\frac{56}{100}$ ($16,876.56) dollars; all surveys, contracts, profiles, books, and all property belonging to the Empire Construction Company except that of like nature as above enumerated on the line of the Chicago, Springfield and St. Louis Railroad Company south of the line of the Indianapolis and St. Louis Railroad Company:

To have and to hold all the foregoing enumerated property (except that excepted) to them, the said H. H. Cooley & Co., their heirs, executors, administrators, and assigns, forever.

In witness whereof I, D. L. Wing, president of the Empire Con-

struction Company, and I, C. H. Wing, the secretary of the Empire Construction Company, have this 26th day of May, A. D. 1885, set our hands and seals, as authorized by the board of directors of the Empire Construction Company, in accordance with the foregoing resolution.

[SEAL.] EMPIRE CONSTRUCTION COMPANY,
By D. L. WING, *Pres't.*

Attest. C. H. WING, *Sec'ty.*

STATE OF ILLINOIS, } ss:
Montgomery County, }

Be it remembered that on this 26th day of May, A. D. 1885, before me, John J. McLean, clerk of the circuit court within and for said county and State aforesaid, personally appeared Dwight L. Wing, president of the Empire Construction Company, an incorporated company of the State of Illinois, to me personally
230 known to be such, and also C. H. Wing, the secretary of said company, personally known to me to be such, and the said Dwight L. Wing did in my presence subscribe said instrument as president of said company and caused the seal of said company to be thereto affixed, and said secretary did then and there in my presence attest the seal by his signature to said instrument, and that said Dwight L. Wing and said C. H. Wing, who are severally known to me to be the same persons whose names ure subscribed to the foregoing instruments in writing as president and secretary respectively, as aforesaid, and as having executed said instrument for and — behalf of said Empire Construction Company, grantor therein, severally acknowledged the same was signed, sealed, and delivered as the voluntary act and deed of said Empire Construction Company and the voluntary act and deed of each of them as president and secretary for the uses and purposes therein set forth; and said Dwight L. Wing, being by me duly sworn, deposeth and saith that he is the president of the Empire Construction Company, and that the seal affixed to the foregoing instrument is the corporate seal of said company, and that it was thereto affixed with authority of said company, and that the said president and the said secretary subscribed the same by like authority.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed my official seal the day and year last above written, to wit, May 26th, A. D. 1885.

JOHN J. McLEAN, *Clerk.*

Recorded May 27th, 1885, at 4 o'clock p. m., in Book 47, on pages 96, 97, & 98.

JOHN J. McLEAN, *Recorder.*

231 STATE OF ILLINOIS, } ss:
Montgomery County, }

I, John J. McLean, clerk of the circuit court within and for said county and State aforesaid, do hereby certify the foregoing to be a

full, true, and complete copy of the original instruments recorded in my office, as shown in the foregoing certified copies, viz: Empire Construction Company to Cooley & Co., recorded May 27th, 1885, at four p. m., and recorded in vol. 47 of Deeds, on pages 96, 97, & 98.

In testimony whereof I have hereunto subscribed my hand and affixed the official — of said court, at my office, in Hillsboro', Illinois, this fourth day of October, A. D. 1886.

[SEAL.]

JOHN J. McLEAN,
Circuit Clerk.

EXHIBIT No. 7.

In consideration of one dollar in hand paid and in consideration of a contract this day entered into between the St. Louis & Chicago Railway Company, we, H. H. Cooley & Co., hereby grant, bargain, sell, convey, assign, and set over to the said St. Louis & Chicago Railway Company all the described property, viz., all right of way acquired by the Empire Construction Company for the Chicago, Springfield & St. Louis Railroad Company between Litchfield, Ills., and Springfield, Ills., estimated, as per voucher, to be of the value of $4,785.40; all cross-ties between Litchfield, Ills., and
232 Springfield, Ills., on the line of survey made for the Chicago, Springfield & St. Louis Railroad Co., estimated to be of the value of $2,546.00, as per vouchers; all embankments, excavations, trestle-work, tiling, and all *to*her work done in the building and construction of a railroad on the line of survey between Litchfield, Ills., and Springfield, Ills., done and constructed by the Empire Construction Company, estimated to be of the value and cost, as per vouchers, at $72,143.22.

All contracts of right of way guaranteed to the Empire Construction Company for the Chicago, Springfield & St. Louis Railroad Company, estimated, as per vouchers or exhibits, $19,000.00; all right of way contracted for for the Chicago, Springfield and St. Louis Railroad Co. by the Empire Construction Company, estimated, as per vouchers, statements, and exhibits, at $12,000.00; all right of way in Litchfield acquired by the Empire Construction Company for the right of way of the Chicago, Springfield and St. Louis Railroad Co., estimated or of value of $10,000.00; all engineering in the construction, location, survey, and estimates and superintendence of construction in the work done between Litchfield, Ills., and Springfield, Ills., as per vouchers, $4,672.93; all estimates, rights, and advantages accrued to the Empire Construction Co. by reason of any contract heretofore existing and all rights in the Empire Construction Co. resulting from work done, material furnished, money expended, and included in the term miscellaneous, as per vouchers, $16,876.56; all surveys, contracts, profiles, books, and all property belonging to the Empire Construction Co., except that of like nature, as above enumerated, on the line of the

Chicago, Springfield and St. Louis Railroad Co. south of the
233 line of the Indianapolis and St. Louis Railroad Co.; to have and to hold the same to it, the St. Louis & Chicago Railway Co., its successors and assigns forever.

In witness whereof we, H. H. Cooley & Co., have this day set out hands and seals this 26th day of May, A. D. 1885.

H. H. COOLEY & CO. [SEAL.]

STATE OF ILLINOIS, } ss:
Coles County, }

I, Robert S. Hodgen, a notary public in and for said county and State aforesaid, do hereby certify that H. H. Cooley, of the firm of H. H. Cooley & Co., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his act for the firm of H. H. Cooley & Co., as their free and voluntary act, for the uses and purposes therein set forth.

[SEAL.] Given under my hand and notarial seal this 29th day of May, A. D. 1885.

ROBERT S. HODGEN,
Notary Public.

Recorded June 1st, 1885, at 9 o'clock a. m, in Book 47, on page 99 & 100.

JOHN J. McLEAN, *Recorder.*

STATE OF ILLINOIS, } ss:
Montgomery County, }

I, Jno. J. McLean, clerk of the circuit court within and for said county and State aforesaid, do hereby certify the foregoing to
234 be a full, true, and complete copy of an assignment deed filed in my office and recorded on the first day of June, A. D. 1885, at 9 o'clock a. m., in Book 47 of Deeds, on page 99 and 100.

In testimony whereof I have hereunto subscribed my
[SEAL.] hand and affixed the official seal of said court, at my office, in Hillsboro', Illinois, this 17th day of January, A. D. 1888.

JOHN J. McLEAN,
Circuit — Clerk.

235 Papers last referred to are marked Exhibits 8 and 9.

Counsel for defendant renews his objection to all of the papers introduced as exhibits, as not being competent evidence.

HENRY H. BEACH, being duly sworn on behalf of the complainant, testified as follows:

(By Mr. JUDSON:)

1 Q. State your name and residence.

A. My name is Henry H. Beach. I reside in Litchfield, Illinois.

2 Q. What is your occupation?

full, true, and complete copy of the original instruments recorded in my office, as shown in the foregoing certified copies, viz: Empire Construction Company to Cooley & Co., recorded May 27th, 1885, at four p. m., and recorded in vol. 47 of Deeds, on pages 96, 97, & 98.

In testimony whereof I have hereunto subscribed my hand and affixed the official — of said court, at my office, in Hillsboro', Illinois, this fourth day of October, A. D. 1886.

[SEAL.]

JOHN J. McLEAN,
Circuit Clerk.

EXHIBIT No. 7.

In consideration of one dollar in hand paid and in consideration of a contract this day entered into between the St. Louis & Chicago Railway Company, we, H. H. Cooley & Co., hereby grant, bargain, sell, convey, assign, and set over to the said St. Louis & Chicago Railway Company all the described property, viz., all right of way acquired by the Empire Construction Company for the Chicago, Springfield & St. Louis Railroad Company between Litchfield, Ills., and Springfield, Ills., estimated, as per voucher, to be of the value of $4,785.40; all cross-ties between Litchfield, Ills., and
232 Springfield, Ills., on the line of survey made for the Chicago, Springfield & St. Louis Railroad Co., estimated to be of the value of $2,546.00, as per vouchers; all embankments, excavations, trestle-work, tiling, and all *to*her work done in the building and construction of a railroad on the line of survey between Litchfield, Ills., and Springfield, Ills., done and constructed by the Empire Construction Company, estimated to be of the value and cost, as per vouchers, at $72,143.22.

All contracts of right of way guaranteed to the Empire Construction Company for the Chicago, Springfield & St. Louis Railroad Company, estimated, as per vouchers or exhibits, $19,000.00; all right of way contracted for for the Chicago, Springfield and St. Louis Railroad Co. by the Empire Construction Company, estimated, as per vouchers, statements, and exhibits, at $12,000.00; all right of way in Litchfield acquired by the Empire Construction Company for the right of way of the Chicago, Springfield and St. Louis Railroad Co., estimated or of value of $10,000.00; all engineering in the construction, location, survey, and estimates and superintendence of construction in the work done between Litchfield, Ills., and Springfield, Ills., as per vouchers, $4,672.93; all estimates, rights, and advantages accrued to the Empire Construction Co. by reason of any contract heretofore existing and all rights in the Empire Construction Co. resulting from work done, material furnished, money expended, and included in the term miscellaneous, as per vouchers, $16,876.56; all surveys, contracts, profiles, books, and all property belonging to the Empire Construction Co., except that of like nature, as above enumerated, on the line of the

Chicago, Springfield and St. Louis Railroad Co. south of the
233 line of the Indianapolis and St. Louis Railroad Co.; to have and to hold the same to it, the St. Louis & Chicago Railway Co., its successors and assigns forever.

In witness whereof we, H. H. Cooley & Co., have this day set out hands and seals this 26th day of May, A. D. 1885.

H. H. COOLEY & CO. [SEAL.]

STATE OF ILLINOIS, } ss:
Coles County, }

I, Robert S. Hodgen, a notary public in and for said county and State aforesaid, do hereby certify that H. H. Cooley, of the firm of H. H. Cooley & Co., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his act for the firm of H. H. Cooley & Co., as their free and voluntary act, for the uses and purposes therein set forth.

[SEAL.] Given under my hand and notarial seal this 29th day of May, A. D. 1885.

ROBERT S. HODGEN,
Notary Public.

Recorded June 1st, 1885, at 9 o'clock a. m, in Book 47, on page- 99 & 100.

JOHN J. McLEAN, *Recorder.*

STATE OF ILLINOIS, } ss:
Montgomery County, }

I, Jno. J. McLean, clerk of the circuit court within and for said county and State aforesaid, do hereby certify the foregoing to
234 be a full, true, and complete copy of an assignment deed filed in my office and recorded on the first day of June, A. D. 1885, at 9 o'clock a. m., in Book 47 of Deeds, on page- 99 and 100.

In testimony whereof I have hereunto subscribed my
[SEAL.] hand and affixed the official seal of said court, at my office, in Hillsboro', Illinois, this 17th day of January, A. D. 1888.

JOHN J. McLEAN,
Circuit — Clerk.

235 Papers last referred to are marked Exhibits 8 and 9.

Counsel for defendant- renews his objection to all of the papers introduced as exhibits, as not being competent evidence.

HENRY H. BEACH, being duly sworn on behalf of the complainant-, testified as follows:

(By Mr. JUDSON:)

1 Q. State your name and residence.

A. My name is Henry H. Beach. I reside in Litchfield, Illinois.

2 Q. What is your occupation?

A. I am a manufacturer.

3 Q. How long have you resided in Litchfield?

A. Near 30 years.

4 Q. Had you any connection with the organization and management of The Chicago, Springfield & St. Louis Railroad Company, the defendants in this case?

A. I was one of the directors in the start of the thing.

5 Q. You served as a director during the whole of the continuance of this company, did you not?

A. Yes, sir; that is, the Chicago, Springfield & St. Louis Railroad Company.

6 Q. I see in the records of the company mention is made of a former organization, the Springfield & St. Louis railroad. Was any work done by that first company?

A. No, sir; nothing only a little surveying. We had a profile made of it and afterwards remodeled, re-formed a little by Wilson.

236 7 Q. Was any actual work done by the first company?

A. No, sir; not a shovel of dirt thrown.

8 Q. In the case of the Chicago, Springfield & St. Louis Railroad Company, was any work done in constructing that road?

A. There was a good deal done in constructing that road, several miles south and I can't tell how much north.

9 Q. When you mean north and south you mean what?

A. South and north of the railroad, the I. & St. L.

10 Q. That is, several miles south of Litchfield and several miles north of Litchfield?

A. They worked in sections, pieces of road. I never knew exactly how much, but I knew that some work was done.

11 Q. Was that work done through the road itself or by contractors?

A. Through the Empire Construction Company.

12 Q. Were you a member of the board of directors when the contract was made with the Empire Construction Company?

A. Yes, sir.

13 Q. Do you know who was president of the Empire Construction Company?

A. D. L. Wing.

14 Q. Do you know Mr. Wing?

A. I do.

15 Q. He formerly lived and was engaged in business in Litchfield?

A. He done business here, but he moved; left here.

16 Q. Who was engineer of the road when this work was done for the Chicago, Springfield & St. Louis Railroad Company?

A. Wilson.

237 17 Q. Do you know whether he is living now or not?

A. I heard he was dead, but I don't know whether there is any truth in it.

18 Q. In regard to the work done for the Chicago, Springfield & St. Louis Railroad Company by the Empire Construction Company,

what can you say of the work done south of Litchfield or south of the I. & St. Louis, constructed in the town of Litchfield?

A. That was graded and bridged and culverts put in; that is about all.

19 Q. Were you personally familiar with that work?

A. I saw it when going on, a piece up and down the road.

20 Q. A piece up what road?

A. The Wabash.

21 Q. About how many miles was that road so built?

A. I think about nine miles of it was graded; about a mile, I think, below Mt. Olive, I think, was graded. I am not positive exactly, but not far from it.

22 Q. Now, turning your attention to the north of the I. & St. L. track in Litchfield, what do you know as to what work was done there?

A. The track was laid from the I. & St. L. railroad about seven-eighths of a mile north, and beyond that I cannot tell anything about it, because I was never out on that line.

23 Q. Did you ever have anything to do personally with this construction?

A. No, sir; in no shape, way, or manner.

24 Q. You attended the board meetings?

A. That is all; yes, sir.

238 25 Q. Was Mr. D. L. Wing president of the Empire Construction Company during this entire time?

A. He was during the time of the construction of that first construction.

26 Q. I see from the minutes of the company you were present at a meeting of the board of directors of the Chicago, Springfield & St. Louis Railroad Company held at East St. Louis February 17th, 1883, where the maps and profiles of the road were submitted by the engineer and adopted by the board of directors. Do you recall that meeting?

A. I do; yes, sir.

27 Q. Do you remember that the maps and profiles were submitted and adopted?

A. I remember they had the map and profile of it.

28 Q. What can you say of that map; was it a single small map or on a large scale?

A. It was a profile of the road, the map—let me see—I don't know as I recollect just the shape. It was cut up and it was in sectional parts of the road.

29 Q. It indicated the exact location of the road, didn't it?

A. It was supposed to, and afterwards it was somewhat changed; some changes were made. I know that Mr. Wing took that upon himself to do without submitting that to the board at all.

30 Q. When did you last see that map?

A. I saw it about 1885, I think, in the office of the railroad company.

31 Q. Which railroad?

A. Of the Chicago and St. Louis Railroad Company, in the
239 hands of the chief engineer.

32 Q. When you say the Chicago & St. Louis what do you mean?

A. The present road as it is now operated.

33 Q. The St. Louis & Chicago Railroad Company?

A. Yes, sir.

34 Q. Who was in charge of that office when you saw it?

A. Mr. Olmstead.

35 Q. Who was he?

A. He was the chief engineer of the railroad.

36 Q. Do you remember whether or not this map had the name of the Chicago, Springfield & St. Louis railroad upon it when first prepared?

A. No, sir; it was the old name, the original name on it.

37 Q. What was that?

A. The Springfield & St. Louis & Chicago, that is.

38 Q. Do you mean it was the name of the Chicago, Springfield & St. Louis?

A. Yes; I mean that was the name of the second company; it changed three times.

39 Q. Did it have the company's stamp on it?

A. The engineer, you know, printed with a pen under the profiles, you know.

Counsel for the defendant objects to all this testimony on the same grounds as heretofore stated.

40 Q. Do you know how this map, the property of the Chicago, Springfield & St. Louis Railroad Company, came into the possession of the subsequent road, the St. Louis & Chicago?

240 A. Well, I can tell you pretty neas, I guess. It was always in the hands of Wing, of the construction company; never was out after we first met, after we mentioned it; he always held it; and when the office was moved here he brought all these old profiles and books here, and they had them here in town, and I saw the old profiles of the original road—that is, the Chicago, Springfield & St. Louis.

41 Q. You saw them at his office?

A. Yes, sir.

42 Q. Where was the first office of the Chicago, Springfield & St. Louis Railroad Company?

A. In this room.

43 Q. How long did it continue in this room?

A. That I can't tell; I didn't keep no track of it.

44 Q. When you say you saw it here you mean in one of the offices of Southsorth & Atterbury, in the city of Litchfield?

A. Originally the engineer had his office here, where the records and the meetings were held here.

45 Q. Do you know where the office of the Empire Construction Company was?

A. I think in St. Louis.

46 Q. Was that ever located or moved to Litchfield?

A. Not to my knowledge.

47 Q. Do you know when these papers and maps were first delivered to Mr. Wing?

A. I do not.

48 Q. Do you recall what was to be the location or general construction of the road of the Chicago, Springfield & St. Louis road directly north of Litchfield?

A. Well, I don't know that I do. It was supposed to be a
241 north and south line, you know; run as near an air line to Springfield as possible; no particular location, only it was located on the map which was adopted at the time.

49 Q. You don't remember whether it was the sectional or half-sectional line it run on?

A. I don't remember about that; I am not certain about that. It was changed after it started; it started first to run on a quarter-section line, you know—that is, the farmers wanted it there, but whether it run there, of course, I can't tell now. I have forgotten.

50 Q. I see you were one of the incorporators and a member of the first board of directors of the St. Louis & Chicago Railway Company that was formed May 1st, 1885?

A. Yes, sir.

51 Q. And which is now operating the road between Litchfield and Springfield?

A. Yes, sir.

52 Q. Did you become such at the solicitation of any person; and, if so, whom?

A. Of Mr. Wign.

53 Q. The same D. L. Wign you have heretofore mentioned?

A. Yes, sir.

54 Q. What, if any, representations did he make to you to go into this new company?

Counsel for the defendant- objects as heretofore and specifically objects to this question as improper.

A. Well, he said if we could change the name of the road they would go ahead and get the money and complete the road; that he had the arrangements all made, but to do that we had to
242 change the name of the road. That was the condition the thing was done under. It was to build the road, and that was what we were after and nothing more.

55 Q. You say change the name from what?

A. We made it into the St. Louis & Chicago; to change the name into the St. Louis & Chicago; that is the present company operating that road. It has been changed so much I can't recollect all.

56 Q. State whether or not anything was said at that time, at and before the organization of the St. Louis & Chicago Railroad Company in 1885, as to the work on the property that had been acquired and the work that had been done in the construction of the old Chicago, Springfield & St. Louis railroad.

A. Well, that was supposed to follow it. Turned the road over to the new company.

Counsel for the defendant- renews his objection to this testimony.

57 Q. Well, was anything said by Mr. Wing in reference to that or was that discussed by you?

A. Now, let me see; I will have to think about that a little bit. Well, I can't tell you now whether or not there was any discussion about it or not. He came with the papers already made out, everything all fixed up, and asked that you know of the old board of directors, and they corroborated it, and of course in doing that they turned over—well, I don't think they did turn it over. I think there was a little—no, the old board of directors didn't turn it over.

243 (By Mr. CONKLING:)

58 Q. Turned what over?

WITNESS: The road; they didn't turn over the property and work. I think there was a little hitch about that.

59 Q. Did you have anything to do with the road this side—to build a road south of the I. & St. L., called the Litchfield & St. Louis?

A. No, I did not. The Litchfield & St. Louis, I had nothing to do with that; that was a part of the old road; I was a director in that and held stock in it.

60 Q. You mean the old road?

A. Yes; the original road; the Springfield & St. Louis.

61 Q. Do you know John A. Hunter, who was one of the incorporators and served as a director of the St. Louis & Chicago?

A. Yes, sir.

62 Q. Who was he?

A. He was a man who lives in St. Louis, a merchant there, and had his office in the Merchants' exchange.

63 Q. Do you know John J. McLean?

A. Yes, sir.

64 Q. What is his business?

A. He is circuit clerk of this county.

65 Q. Do you know Louis H. Thomas?

A. He formerly lived north of here, about 25 miles.

66 Q. Do you know D. L. Wing? Is he the same D. L. Wing that you have been speaking of?

A. Yes, sir.

67 Q. Did D. L. Wing have anything to do with the organizing the original corporation of the Chicago, Springfield & St. Louis railroad?

A. Yes, sir.

68 Q. It appears from the records here that one W. R. Frary subscribed to nearly all the stock of the Chicago, Springfield
244 & St. Louis Railroad Company. Who was W. R. Frary?

A. He was D. L. Wing's secretary; he was secretary of the Wing Milling Company.

69 Q. Do you know where the Wing Milling Company operated?
A. In Litchfield; their office was in St. Louis.
70 Q. Do you know any of these parties named as incorporators and the first board of directors of the Litchfield & St. Louis Railroad Company, viz: Edward S. Orr, Charleston, Illinois; Henry A. Neal, Charleston, Illinois; H. E. Henslee, Charleston, Illinois; J. M. Alvy, Charleston, Illinois; H. E. Wilson, Charleston, Illinois. Do you know these gentlemen?
A. No.
71 Q. Did you ever hear of them?
A. No.
72 Q. Do you know H. E. Wilson?
A. I knew there was such a man here, but I didn't know him.
73 Q. State whether or not you ever saw while you were a director in the old company, the Chicago, Springfield & St. Louis, any contracts for the right of way for that road.
A. Well, I saw quite a number of contracts.
74 Q. By whom were those contracts obtained?
A. I think they were obtained by Mr. Johnson—some of them—and some, I think, by Mr. Southworth.
75 Q. What Johnson do you refer to?
A. Benj. F. Johnson, the contractor.
76 Q. And what Southworth?
A. Mr. Southworth was acting then, I think, as president; E. Southworth.
245 77 Q. Now, when did you last see any of these contracts of right of way for the Chicago, Springfield & St. Louis Railroad Company which you saw while the Chicago, Springfield & St. Louis Railroad Company was engaged in the construction of that road through its contractor?
A. I can't give the exact date, but some time, I think, in 1885.
78 Q. When did you see them last?
A. In the company's office in Litchfield.
79 Q. Which company?
A. The Chicago & St. Louis or St. Louis & Chicago Railway Company's office.
80 Q. Where was the office of that company in Litchfield?
A. It was on the northeast corner of State street and Rider.
81 Q. Was that the same office in which you saw the maps and profiles of which you have spoken of, the old Chicago & St. Louis?
A. The same office.
82 Q. Who was in charge of that office when you saw these documents there?
A. Mr. Olmstead.
83 Q. What are Mr. Olmstead's initials, if you know?
A. Well, I don't know that. I don't recollect. L. S. Olmstead, I believe.
84 Q. You were then a director in the St. Louis & Chicago Railway Company, were you not?
A. No; I had resigned.

85 Q. How long were you engaged as director in the St. Louis & Chicago Railway Company?

A. During one meeting.

86 Q. What was the occasion of your resignation?

Defendants' counsel objected to the question as irrelevant and incompetent.

246 A. Well, my objection was the thing was not satisfactory. I was not satisfied the way things were going. The thing was a little in arrear and I wanted it straightened out, and it was on account of those bonds that I resigned.

87 Q. What bonds?

A. The bonds of the Chicago, Springfield & St. Louis Railway Company. I required it to be settled up before that.

88 Q. Did any other person resign when you resigned?

A. Mr. McLean. I don't know that he did the same day, but he did right after. I am not sure about that; he may have the same day.

89 Q. Do you remember while you were director in the St. Louis & Chicago of any conveyances being made to the Empire Construction Company or to Cooley & Company or from Cooley & Company to the St. Louis & Chicago of the property acquired by the old Chicago, Springfield & St. Louis?

A. That came up at the same meeting I resigned. I don't know what was done. I resigned—I stepped out before the thing was done. I recollect that was brought up and not completed when I left as near as I can recollect now.

90 Q. And the execution of these instruments and the turning over of this property to the new company was the occasion of your resigning?

Counsel for the defendant objected to the question on the same grounds as heretofore and also as leading, the witness not having intimated anything of the kind until the question was put.

247 A. Yes, sir.

91 Q. You have already testified, Mr. Beach, to the extent of the work that was done south of the I. & St. L. south of Litchfield, running parallel with the Wabash?

A. Yes, sir.

92 Q. Has any road been built upon that grade and right of way that was thus made?

A. I think a track has been laid on it as far as Mt. Olive.

93 Q. State whether the track has been laid on that identical roadbed or not.

A. It has.

94 Q. Throughout the whole extent?

A. No; there is grading beyond Mt. Olive.

95 Q. Q. About how far has the track been laid?

A. Well, I have seen it as far as Mt. Olive; beyond that I don't know anything about it; maybe a little this side of Mt. Olive.

96 Q. About how far from Mt. Olive?

A. I don't think very far; about half or three-quarters of a mile.

97 Q. About how far in length then?

A. I think it is eight miles from Mt. Olive.

98 Q. Where does the road end?

A. At some coal mines, unless it has been built beyond quite lately.

99 Q. Is there any variation in your knowledge or not from the old road-bed?

A. Not to my knowledge there is not. There might and I not know it.

100 Q. State whether or not there is any substantial variation in it.

A. Well, I don't know.

248 Cross-examination by Mr. CONKLING:

101 X Q. Do you recollect what month it was when you saw those maps and profiles?

A. O, I can't tell. I can't recollect. The records will show that. That meeting I can't recollect.

102 X Q. Where did the Chicago, Springfield & St. Louis Railroad Company have its office in Litchfield in 1885?

A. On the northeast corner of State and Rider street-, upstairs.

103 X Q. How long had it had its office there prior to that time?

A. No- very long; just moved in there, I think; probably had not been here long. Mr. Wing held all the papers up to that time. They were brought there and the office was opened. He opened the office there.

104 X Q. Afterwards it was you had this conversation and this board meeting whereat you made your resignation?

A. Yes, sir; it was after that.

105 X Q. You saw the papers after the board meeting?

A. Yes, sir; I saw them after the board meeting.

106 X Q. How long after the board meeting?

A. O, I judge a month or such matter. It might not have been that long.

107 X Q. Did you examine them at that time?

A. I looked at them. They were all strung around in the room. The papers were lying over the table and strung out. Mr. Olmstead assorted them out and straightened up the maps and had the
249 sides of the room hung all around, and I looked over them a great many times before that.

108 X Q. How far apart is the Wabash road and the line of grading referred to running from here south to Mt. Olive?

A. Fifty to seventy-five feet, I suppose.

109 X Q. Do they run parallel with each other?

A. Yes; some places, especially going out of Litchfield, they are just a block apart and come nearer together across the reservoir.

110 X Q. Do you know the amount of work done from here to Mt. Olive by the Chicago, St. Louis & Springfield Railroad Company?

A. Not any done by them, but done by the construction company. They had contracted it.

111 X Q. Did the Empire Construction Company ever turn that work over to the Chicago, Springfield & St. Louis Company?

A. No, sir.

112 X Q. Did the Chicago, Springfield & St. Louis Railroad Company ever accept it?

A. No, sir.

113 X Q Do you know whether it was ever paid for by the Chicago, Springfield & St. Louis Railroad Company?

A. Not to my knowledge.

114 X Q. If it had been do you think you would have known it?

A. I should be apt to have known it.

115 X Q. Was there a continuous line of work from the I. & St. L. down to the mines or to Mt. Olive?

A. No; there was a continuous line from about half a mile east of the I. & St. L. railroad to Mt. Olive; the street had never been given for that road. There was some property there that had been bought for a crossing — the I. & St. L. road.

250 106 X Q. The line of the work commenced south of there?

A. It commenced nearest to Mauck's, or near that.

117 X Q. Was there a continuous line of grading and bridging from that to Mt. Olive?

A. I don't think there was any breaks in it at all.

118 X Q. Do you recollect there was no bridging?

A. I know the bridging was all in. There was no bridging except the water works; the reservoir to cross; that was in, and I know there were a good many culverts that were in.

119 X Q. No ties laid?

A. No ties or iron.

120 X Q. Who tied and ironed that road running down there?

A. You can't prove that by me; I don't know; I have no idea.

121 X Q. The Chicago, Springfield & St. Louis Railroad Company did not?

A. I don't know that they did; I don't know anything about it who did it; I am not posted on that; that is since my time.

122 X Q. Was there any additional work done in the way of grading along this line of grading that you have already referred to after the Chicago, Springfield & St. Louis Railroad Company had given up its contract if it ever gave up any contract to the Empire Construction Company?

A. No; I don't think there was anything done by them until they laid the iron on it.

123 X Q. Is there any difference in the line used by the present St. Louis & Chicago Railroad Company from here to Mt. Olive and the line according to the original survey of the Chicago, Springfield & St. Louis Railroad Company?

A. Well, nothing that I know of.

124 X Q. Do you know whether this work that you have
251 referred to as having been done—the grading of it—is on the line of the old survey?

A. Yes; it is on the old survey that was graded.

125 X Q. Am I right in understanding awhile ago there had been some change in that?

A. Not that I know of. I say there might have been some changes. I say down to Mt. Olive they might have swung around to the coal shaft or something like that, but that road was graded right through to Mt. Olive. There might have been a little change there that I can't account for, as I have not been to see it.

126 X Q. Do you mean to say there were no changes from here to Mt. Olive?

A. From here to the coal shaft there are none that I know of. I know they laid it on the old road-bed all the way down to that point. I noticed when they laid the track. There might have been some changes, minor changes, to get into the coal shaft, but it was on the old road-way; on the old grade.

127 X Q. You spoke about Mr. Southworth doing certain things for the company. Is that the Mr. Southworth of the firm of Southworth & Atterbury, attorneys?

A. Yes, sir.

128 X Q. What relation did he bear to the company at that time; was he the attorney for the company?

A. I think he was the attorney and was getting the right of way, if I recollect about it. He was working for it, anyway.

129 X Q. That was for the Chicago, Springfield & St. Louis Railroad Company?

A. Yes, sir.

130 X Q. That was during the time you were a director?

A. Yes, sir.

131 X Q. You say you understood he was attorney for the company?

252 A. I think he was acting in the capacity of attorney, but he was president at that time; he was president one year, you know, but I can't settle that; the records will show that.

Signature waived.

JOHN J. MCLEAN, sworn and examined on behalf of the complainant, testified as follows:

(By Mr. JUDSON:)

1 Q. State your name, residence, and occupation.

A. My name is John J. McLean; I reside at Hillsboro', Montgomery county, Illinois; I am clerk of the circuit court of this county.

2 Q. Did you ever have any connection with the Chicago, Springfield & St. Louis Railroad Company?

A. Yes, sir.

3 Q. What capacity?

A. I was one of the directors, and was secretary of the company for awhile.

4 Q. Did you have any connection with the St. Louis & Chicago Railroad Company?

A. Yes, sir; I bore the same relation to that that I did to the other.

5 Q. You were one of the incorporators of both companies?

A. Yes, sir.

6 Q. At whose instance did you become a director and incorporator of that company?

Counsel for the defendant- objected to this question as irrelevant, immaterial, and incompetent.

A. At Mr. Wing's, I think.

7 Q. What Wing?

A. D. L. Wing.

253 8 Q. What, if any, statement did he make to you as to the purpose for which that new company was organized when there was already a company in existence?

Counsel for the defendant- objected to the question as irrelevant, immaterial, and improper.

A. Well, it seemed they had got into some trouble—the old company—and they thought by the organization of a new company that they saw their way clear.

9 Q. Were you ever present at the rooms or office of the new company—that is, the St. Louis & Chicago Railway Company—in the city of Litchfield?

A. Yes, sir.

10 Q. Did you ever see the sectional maps and profiles of the route of the Chicago, Springfield & St. Louis Railroad?

A. Yes, sir.

11 Q. Where did you see them?

A. I saw them at their office here, and I think in my possession at my office in Hillsboro'.

13 Q. You had them in your possession as secretary of the St. Louis & Chicago Railway Company?

A. I am not positive of that; but I think I had.

15 Q. Where did you see these maps and profiles last, or any part of them?

A. I believe I saw a section of them at Hillsboro', in the suit there.

14 Q. What was the suit?

A. It was a suit of the Chicago, Springfield & St. Louis Railroad Company against Mr. Beach and others and myself, one of the defendants.

15 Q. Who represented the railroad company, the plaintiff 254 in that suit?

A. Mr. Conkling.

16 Q. The gentleman who is present at this examination on behalf of the defendants?

A. Yes, sir; he was one of the attorneys and the other was Mr. McConnell, of Springfield, I think.

17 Q. By which side was that map or a portion of it produced at that trial?

A. I think by the plaintiff.

18 Q. Mr. Conkling?

A. Yes, sir; by their side of the case.

19 Q. Did you ever see these maps and profiles in the office of the company in the city of Litchfield?

A. Yes, sir.

20 Q. In what position were they in the office, on a table or spread around the walls of the room, or how?

A. I believe I have seen them in both positions.

21 Q. Do you know Mr. H. H. Beach?

A. Yes, sir.

22 Q. Was he a former director with you in the St. Louis & Chicago Railway Company?

A. Yes, sir.

23 Q. Were you a member of the board when he resigned?

A. Yes, sir.

24 Q. How long did you continue to be a member of the board with the new company?

A. I am not clear as to the time now, but for several months.

25 Q. Were you a member of the board of the new company when conveyances were executed to the new company from the Empire Construction Company, through H. H. Cooley & Co., conveying to the St. Louis & Chicago Railway Company the property acquired by the Chicago, Springfield & St. Louis Railroad Company?

Counsel for the defendant objects to this question both in form and substance and materiality.

A. I believe I was.

255 26 Q. Do you remember such conveyances—of the fact of their being delivered to that company?

A. I think I do, sir.

27 Q. I believe you said you for a time were secretary of the new company?

A. Yes, sir.

28 Q. About how long were you secretary of the Chicago & St. Louis Railway Company?

A. Well, for several months; I think I was elected secretary in the spring and probably held that position to some time in the winter or fall; winter or spring, I don't remember exactly now.

29 Q. As secretary you were custodian of the papers of the company, were you not?

A. I was presumed to be; still, I did not have them all.

30 Q. Where were the papers kept?

A. Well, I had some of them.

31 Q. Did you have the original of these conveyances?

(Witness is shown Exhibits 6, 7, and 8.)

A. I would not be positive about that, but I think I had them; but I would not be positive.

32 Q. State whether or not you ever had in your possession any contracts for right of way obtained by the Empire Construction Company for the Chicago, Springfield & St. Louis Railroad Company.

A. No, sir.

33 Q. Did you ever see any such contracts for the right of way?

A. Yes, sir.

34 Q. Where did you see them?

A. I saw them in the office of the company.

35 Q. What company?

A. Well, both companies, the Chicago, Springfield & St.
256 Louis, afterwards the St. Louis & Chicago; they had the same office for awhile—that is, the St. Louis and Chicago succeeded the other.

36 Q. One company succeeded the other in the office and in the possession of the papers, did it?

A. Yes, sir; that is my understanding; yes, sir.

37 Q. Who had possession of these old contracts for the right of way in the new company? Did you say you didn't have them as secretary?

A. They were in the office; I saw them taken out of the drawer in the office, and I believe Mr. Olmstead, the engineer, was the party that had the key; no, I am not certain as to that, but I never had the key to the office and only saw them when called to attend a meeting.

38 Q. What officer of the company at headquarters had actual possession thereof?

A. The engineer, I think.

39 Q. Did Mr. Wing make his headquarters there?

A. I think he did in doing business for the company.

40 Q. Do you know whether his mill was running at the time at Litchfield when he organized the new company—the St. Louis & Chicago?

A. I think not; at least it was not being run by him.

41 Q. Are you acquainted in Charleston, Illinois, at all?

A. Very limited, sir, my acquaintance there.

42 Q. Please look over this list of persons in the articles of incorporation designating incorporators, and state whether you know any of them and who they are of the Litchfield & St. Louis Railroad Company, Exhibit No. 3.

(Witness examined paper referred to.)

A. No, sir; I am not personally acquainted with any of them.

43 Q. Were you an officer of the St. Louis & Chicago Rail-
257 way Company when a deed of trust secuing certain bonds was executed by that company to the Mercantile Trust Company of New York?

Counsel for the defendant- objected to the question as immaterial and irrelevant.

A. I think I was, sir.

44 Q. State whether or not any discussion took place in the board meeting prior to the execution of that mortgage or deed of trust as to the outstanding mortgage and bonds of the Chicago, Springfield & St. Louis Railroad Company.

Counsel for the defendant- objected to the question as immaterial and incompetent.

A. Yes, sir.

45 Q. Was Mr. D. L. Wing present at any such dispussion?

A. Yes, sir.

46 Q. State what, if anything, he said relative to such outstanding mortgage and bonds to the board.

Counsel for the defendant- objected to the question on the same ground as heretofore.

A. I think he was asked about those; as to the surrender of them, I think, and my understanding was that he agreed to do that; to surrender them or to secure them for the board.

47 Q. Who succeeded you as secretary of the St. Louis & Chicago Railway Company?

A. Mr. Hodgen.

48 Q. Where does he reside?

A. Charleston, I understand.

49 Q. Do you know him?

A. Yes, sir.

50 Q. Do you know what his business is?

A. Not outside this secretaryship.

51 Q. Do you know whether he is still secretary of the company?

258 A. Not of my own personal knowledge; but I understand he is.

52 Q. Did you resign you- position as secretary and director at the same time?

A. I think I did, sir.

53 Q. What was the occasion of your resigning?

Counsel for the defendant- objected to all this testimony on the same ground as heretofore.

A. Well, I had reasons of my own for it; nothing special; only I thought I would get out.

54 Q. You remained a director after Mr. Beach resigned, did you not?

A. Yes, sir.

55 Q. Were you present at any meeting of the board when Mr. Beach was there, when the subject of the bonds of the Chicago, Springfield & St. Louis Railroad Company were discussed?

A. Yes, sir.

56 Q. Was Mr. Wing present at the same time?

Counsel for defendant- objected on the same ground as heretofore.

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Counsel for the defendant- objected to all this testimony on the same ground as heretofore.

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A. Yes, sir.

55 Q. Were you present at any meeting of the board when Mr. Beach was there, when the subject of the bonds of the Chicago, Springfield & St. Louis Railroad Company were discussed?

A. Yes, sir.

56 Q. Was Mr. Wing present at the same time?

Counsel for defendant- objected on the same ground as heretofore.

A. Yes, sir.

57 Q. Do you remember what, if anything, was said by Mr. Wing on such occasion as to these outstanding bonds?

Counsel for the defendant- objected on the same ground as heretofore.

A. Well, the — was talked of there. It seemed the other members of the board were very anxious that these bonds should be returned. They understood — was and is now teat Mr. Wing agreed to return those bonds or take care of them, and my understanding was he would produce them.

259 Counsel for the defendant- objected to the answer of the witness as immaterial and irrelevant.

58 Q. Was that subject merely brought up once or more than once?

A. Oh, it was talked of several times.

59 Q. What, if any, statement did Mr. Wing make as to the condition of the bonds or his control over the bonds?

Counsel for the defendant- objected on the same ground as heretofore.

A. My understanding was that he either had them or that they were where he could get them.

60 Q. You have no connection now with any of these railroad companies?

A. No.

61 Q. When did you first become connected with the Chicago, Springfield & St. Louis Railroad Company?

A. I think it was in the spring of 1885—April or May, I think.

62 Q. It was after the work had been abandoned on the old road?

A. Yes, sir.

Cross-examination by Mr. CONKLING:

63 X Q. This map you have referred to as having been seen by you at Hillsboro' on the trial of a case against the Chicago, Springfield & St. Louis Railroad Company—do you mean to say that was the original map of the survey of the Chicago, Springfield & St. Louis Railroad Company?

A. I mean to say it was a section of it, in my opinion.

64 X Q. Do you mean to say it was a map showing where the line of the road did run at one time or was it one of the original maps?

260 A. Well, in my opinion, it was one of the original maps.

65 X Q. I didn't ask altogether your opinion, but whether you know.

A. That is my judgment; that is as far as I can say.

66 X Q. You stated in your evidence you have received as secretary some of the papers belonging to the Chicago, Springfield & St. Louis Railroad Company. Do you know whether any of those papers are retained by any one else?

A. I think that Mr. Atterbury had some of them.

67 X Q. Did you ever ask him for them?

A. I don't know that I did.

68 X Q. Did you know while you were secretary that he did have them?

A. Yes, sir.

69 Q. Did you permit them to remain in his hands?

A. Yes, sir.

70 X Q. Do you know what he has done with them?

A. No, sir.

71 X Q. What reasons, if any, were given in these conversations referred to for demanding those bonds from Mr. Wing?

A. It came up in relation of the making of new contracts. After they had organized the new company, then they were proposing to make new contracts for the construction of the road.

72 X Q. Was it because they considered the bonds did or didn't have further legal bearing or effect? What was said about that?

A. Well, my impression is that the directors were afraid that they might have some legal effect, and consequently they wanted them returned.

73 X Q. On what ground did they want them returned?

261 A. On the ground that they were proposing to make a new contract.

Signature waived.

Claims of Witness.

John J. McLean, 24 miles	$1 20
" attendance	1 00

E. SOUTHWORTH, being duly sworn on behalf of the complainant, testified as follows:

(By Mr. JUDSON:)

Q. State your name and residence.

A. My name is E. Southworth; I reside in Litchfield, Illinois, and am a lawyer by occupation.

2 Q. How long have you resided in Litchfield?

A. 29 years on the first day of last January.

3 Q. Were you at any time connected with the corporation known as the Chicago, Springfield & St. Louis Railroad Company; and, if so, in what capacity?

A. Yes, sir; I was in 1883. I was president of the company from its organization up to May or June, 1883?

4 Q. You spoke of a prior company, the Springfield & St. Louis Company. Were you connected with that, too?

A. I was one of the directors and vice-president, I think, of that company.

5 Q. Was any *owrk* done by this first company?

A. I think not; only surveying. I think we spent about $2,500 for a preliminary survey.

262 6 Q. Where was that first original company's road to run from?

A. From Springfield to St. Louis, through Litchfield.

7 Q. Now, in regard to the second company—the one of which you were president—the Chicago, Springfield & St. Louis Company, did that company do any work, to your knowledge?

A. Yes, sir; it was through that company that there was work done.

8 Q. Speaking first of that part of it which lies north of the track of the Indianapolis & St. Louis railroad—that is, north of Litchfield—state if you remember how much work was done on that while you were connected with the company, in a general way—that is, how much was done by that company all together north of the I. & St. L.

A. There was a little less than a mile of track laid through the town here; it was done along in different places; there was some heavy grading done our about a mile and a half; seven miles and a quarter or seven miles and a half, perhaps it is, north of this I. & St. L. and then along up there in Zanesville township there was considerable work done and some up in Harvel township, but I wasn't along up there to see very much about the work. I know they talked about it. As to what was done on grading south of the road I know more particularly about. I think it was all graded south of the I. & St. L. to Mt. Olive substantially.

9 Q. By whom was all this work done by the company? Was it done through a contractor?

A. Yes; Johnson, Brother & Faught; they were the contractors.

10 Q. They were subcontractors?

263 A. They were subcontractors from the Chicago, Springfield & St. Louis Railroad Company.

11 Q. But who had the contract with the Chicago, Springfield & St. Louis? I mean what construction company.

A. It was the Empire Construction Company.

12 Q. Did you ever have anything to do with the procuring of the right of way for this work done for the old company?

A. Yes, sir. I bought some of the right of way and paid for it and contracted for considerable for—took written contracts. I think there were perhaps six or seven miles that I did not; then a good deal of it I made sort of contracts for where there was no writing. I think about seven or eight miles, if I recollect rightly, was contracted for in writing.

13 Q. That is, six to seven miles you contracted for in writing and the balance gave the right of way without writing?

A. Well, Mr. Wilson, who was the chief engineer, got a good deal of the right of way.

14 Q. You were president of the road *it* the time, were you?

A. Yes. He used to bring in the contracts he had and show them to me; some deeds that he had used to specify.

15 Q. Did you make any contracts for the right of way for the north of the I. & St. L. from here to the Sangamon county line?

A. I made contracts for the right of way mostly through this township north and about three miles into the next township, which

would make nine miles. There were some pieces I did not make contracts for, but that was mostly north.

16 Q. How wide was the right of way you secured out
264 through these townships?

A. Generally, I think, 66 feet; about 66 feet, I think; That is my recollection, but I think it varied. Where it was rough they required more. In some places they concluded to get along with a little less and, I think, I made some of them sort of conditional that if they took 66 feet it should be (I think I had that kind of contract with Mr. Fogelman for half a mile) that if we took more we should pay for the amount we took. He wanted me to get along with 50 feet.

Counsel for the defendant- objects to the answer of the witness.

17 Q. Did you pay for any of this right of way north of the I. & St. L.? Did you pay for any of them?

A. I did.

18 Q. With whose money was it paid?

A. It was money furnished me by the chief engineer. I think I paid with his checks on the bank over here. That is my recollection.

Counsel for the defendant- renewed his objection.

19 Q. Have you any means of knowing the total amount you paid for the right of way north of Litchfield—that is, north of Litchfield—that is, north of the I. & St. L. track?

A. I will begin up to the further end, where I paid.

20 Q. Well, explain in your own way.

A. I will say I paid Carter for a deed—I will not say whether it was a warranty or a quitclaim deed—I think, $57 an acre for four acres all through.

Counsel for the defendant- renewed his objection.

WITNESS (continuing): I may be mistaken, but that is my
265 recollection. I paid Kelley—it runs in my mind I paid him $225, but I won't be positive about it. I think that is what I paid him.

21 Q. Do you recollect any other north?

A. There was an arrangement made with a man by the name of Duncan. He was not the guardian, but had the care, I think, of some of his grandchildren, and $60 an acre was paid for what was taken across 40 acres. That would be 66 feet across that. Now, that money was put in the bank over here, subject to condemnation. The man himself, who had charge of the grandchildren—a sort of charge—made the bargain with them. They wanted to go right to grading there and didn't take forty days to condemn, and some of the children were away, and he agreed if we would put up $66 that should be subject to be paid when it was condemned that so far as he could make a bargain it should be satisfactory, and then when it was condemned why the money was to be paid out of the bank. I done that by the consent and approval of the chief engineer, who

was acting directly and drawing the money through Mr. Wing. I think that is all the money that went through my hands for the right of way up there.

22 Q. Did Mr. Johnson attend to any of the right of way up there to your knowledge?

A. Yes, sir; Mr. Johnson got the right of way up there, but I don't know whether he ever paid any money or not. He was up there some time before he came here to work getting the right of way in through there—that is, I think, in Bois D'Arc township.

23 Q. Who attended to getting the right of way in Sangamon county?

266 A. They had a man working up there whose name I can't recall, an old man from the East somewhere, that worked a good while up there in Sangamon county.

24 Q. Now, turnung your attention to the line south of the I. & St. L. track, did you have anything to do with the right of way down there?

A. Yes, sir.

25 Q. Please state what you did there in a general way.

A. I have the map before me.

Defendants' counsel objects to all this testimony as incompetent.

(Witness consults the map heretofore referred to and says:)

A. On the map of South Litchfield township, the Mauck and Smith property I don't know about. Then you start from the end of the street down here in Litchfield across Mauck's land doan towards the reservoir. It seems to me I got the right of way across the reservoir grom the city council. Then after you get on the other side of the reservoir is Cheney's heirs. I made an arrangement by which they were paid. They were minor heirs. Some land was bought from Barrett away from the right of way and deeded to Mr. Wilson, and Mr. Wilson deeded it to the Cheney's heirs for the right of way across the Cheney property. Perhaps the mother was the guardian of the children and it was by her approval and that was to be condemned, and that was to be satisfactory as far as they were able to make the F. bargain for the minor children. That is my recollection. Then we come to Briggs. Briggs was paid, my recollection is, $100.

(By Mr. CONKLING:)

26 Q. Do you state of your own knowledge?

267 A. Yes, sir; I am stating I know that money was paid to him and I think it was paid to him in my presence; that is my recollection. Then below Mr. Briggs we come to the Gardner property. That run most a half a mile. We paid him $50 an acre. He deeded to the railroad company, is my recollection, the Chicago, Springfield and St. Louis. The next piece was a little corner where they cross the highway near to one of the Meisenheimers. My recollection is we paid him $50 an acre. I paid that.

27 Q. Did you take a deed?

A. Yes, sir. When I say I paid the money it is my impression that I got the check. I reported what the contract was and Mr. Wilson, the chief engineer, would give me a check on the bank and I would turn it over. Then the next piece that I had to do with was from Mr. Meisenheimer.

Counsel for the defendant- renews his objection to this testimony, and it is understood that the same objection is to continue to all testimony of this character which the witness may give.

WITNESS: I think I bought that of Mr. Brokaw. I paid—I think I paid one of the Brokaws $400. That was for land in the west half of the northeast quarter of section 17. I paid John P. Brokaw, I think it was, $60 an acre. I will have to guess at that. I will say some $240, probably.

28 Q. How long a track was that on his property?

A. I guess it was a little angling across forty acres. Now, I am in doubt about whether we went clear across this or whether that was 80 or 40, but I am satisfied I paid him $60 an acre. I am in doubt whether it went further that that line or whether it would come down here (indicating). My recollection is it was
268 down to that road (indicating), and from there running along the south line of section 17. From that on Mr. Keyser attended to it.

29 Q. Who is Mr. Keyser?

A. Mr. Keyser is a banker, coal miner, and millman at Mt. Olive, in Macoupin county, and was very much interested in the building of this road through Mt. Olive.

30 Q. C. U. Keyser?

A. Yes, sir.

31 Q. Now, as near as you can, state what was the distance in miles which you secured the right of way of.

A. I would say—including that that I got contracts for?

31 Q. Yes; south of the I. & St. L.

A. Well, I would say about a mile and three-quarters would be all that I secured there. It is angling; most all that was paid for.

32 Q. What did you do with the contracts or deeds which you procured for the right of way—these purchases?

A. I handed them over to the chief engineer of the road, Mr. Wilson.

33 Q. Who paid the chief engineer for his services, the railroad or the construction company?

A. Well, the construction company, I guess.

34 Q. Do you know whether or not Mr. Keyser secured the right of way from this point where you left off down to Mt. Olive?

A. Well, yes; I know he did; I know he did; at the same wime I saw some of these deeds, and I know he did in a general way as president of the company; he reported such to me from time to time that he had secured it pretty much all.

Counsel for the defendant- renewed his objection.

35 Q. Now, please state, if you know, what amount of work was

done on the route south of the I. & St. L. track by the old
269 company, the Chicago, Springfield & St. Louis.

A. I think it was all graded and the bridges made under my administration, except after I went out the bridges were built south.

36 Q. How far south?

A. Well, we call it eight miles from here to Mt. Olive.

37 Q. Was the grading done beyond Mt. Olive?

A. Yes, sir; well, about, I should say, from five to eight miles.

38 Q. How wide was the grading on this right of way; what was the width of the road-bed as actually made?

A. About the usual width; I can't tell particularly; the usual width.

39 Q. When you say that bridges were built after you went out you mean after you resigned?

A. Yes, sir; done right along.

40 Q. Done by the old company?

A. Yes; well, the old company or the construction company during my administration.

41 Q. Now, is there a railroad now built on that same right of way or not?

A. I understand it to be on the same; I noticed it; I don't think I have been along it specially, but I casually noticed it, and I thought they used the old grade; I think it is.

42 Q. Do you remember what was the route of the road—the location of the road north of the I. & St. L. track as to whether it followed a section line or half-section line of the county line?

A. The half-section line.

43 Q. Do you remember what half-section line it was to follow?

A. I will look and I can tell for certain. (Witness examines map.) Yes, sir; the half-section line; numbers of sections.

270 44 Q. State the numbers of the sections it runs through.

A. In this township (Litchfield) it runs through the half-section line from about the center of section 21. It crosses the center of section 21. It crosses the Wabash and then runs through sections 16, 9, and 4 in this township.

45 Q. What township is that?

A. Township 7 North Litchfield, and then it keeps on in that line (indicating).

46 Q. Keeps to the right of that same half-section line?

A. Yes, sir.

47 Q. What is the next township north of North Litchfield?

A. Zanesville.

48 Q. Then what comes?

A. Harvel.

49 Q. Let us take Zanesville township. It runs through what sections there?

A. 33, 28, 21, 16, 9, and 4.

50 Q. That is, it is the half-section lines of each of those sections?

A. Yes, sir; and those in Harvel. It follows the same section lines 33, 28, 21, 16, 9, and 4.

51 Q. Then what township comes next?

A. Bois D'Arc. It follows on that line as the road is located now, but the line when I was president diverged.

52 Q. Where did it diverge under your route from the half-section line?

A. At the north end of Harvel township.

53 Q. At that point how many miles about is it from the I. & St. L. track, in Litchfield, the point where it diverged near you?

A. There is North Litchfield, Zanesville, and Harvel—18 miles.

54 Q. How far is that from the north line of the county?

A. It is six miles south of the north line of this county.

271 55 Q. Do you know how far it is from the Sangamon county line to Springfield in a general way?

A. It is about 20 miles on the section line. It may be a little more than that. I have known, but I have forgotten exactly.

56 Q. In this work south of the I. & St. L. track, from Litchfield to Mt. Olive and below, were there any ties laid on the road-bed?

A. I don't remember that there were.

57 Q. How was it now, turning your attention to the present line, to the line north of the I. & St. L. track? Do you remember what amount of work was done on that by the old company?

A. A great deal of that was done in Bois D'Arc township on what was known as the Pawnee line after it diverged from the straight line, but I was never over to see that.

58 Q. I mean on the half-section line. How much was done on that?

A. That I can't tell you.

59 Q. Did you have occasion to go up and examine it along the line?

A. Yes; I was up to see it in a general way. They were working, but there was considerable work done up there after the last time I was there before the work quit.

60 Q. Was the work done in a continuous line or did they work in detached section along?

A. In detached sections.

61 Q. Do you know what was the total amount of work done—that is, the value of the work, the amount of money expended on the road, up to the time they quit work or the work was abandoned?

A. I don't know anything about it, only what the chief engineer told me.

Counsel for the defendant- objected.

272 62 Q. Do you know Mr. D. L. Wing?

A. Yes, sir.

63 Q. State whether or not he had any connection with the organization of this Chicago, Springfield & St. Louis railroad.

Counsel for the defendant- objected as before.

A. Well, pretty much everything was done at his dictation. He was to furnish the money to build the road at the time it was organized. It was organized under his special dictation, and the balance

of us directors were holding the organization together for his special benefit. He had more to say than everybody else.

64 Q. Do you know who composed the Empire Construction Company?

A. I would further say here that the chief engineer was hired by him (Wing). His name was Wilson. He specially asked me to telegraph him, and he came on and Mr. Wing told me he had hired him, and Mr. Wilson held his office in St. Louis a long time. I don't know but what he held his office there all the time while he was chief engineer. He occupied the office here when in town, but his head office was in St. Louis.

65 Q. Do you know W. R. Frary?

A. I knew Mr. Frary; I don't remember his initials.

66 Q. What was his business?

A. He was a kind of chief secretary and manager in Mr. Wing's absence of the mill here. He was apparently a sort of business manager here; and in the absence of Mr. Wing he took Mr. Wing's *palce*, not only in the railroad business, but in the mill business.

67 Q. He was a large subscribed to the stock of this railroad, was he?

273 A. He held most all of it, taking it at the dictation of Mr. Wing.

Defendants' counsel renews his objection.

68 Q. Were you present at the meeting of the board of directors held at East St. Louis when the contract was made with the Empire Construction Company?

A. Yes, sir.

69 Q. At that meeting the map and profiles of the company were approved, were they not, or do you remember as to that?

A. I don't remember about it. I remember we went down there and held the meeting at the solicitation of Mr. Wing.

Counsel for the defendant- objected to this evidence, as the record will show; also incompetent.

70 Q. Do you remember ever seeing the map and profile of the route of the Chicago, Springfield & St. Louis railroad?

A. Yes, sir; often.

71 Q. Who prepared that?

A. Mr. Wilson did. I know he did. I was in his office in St. Louis several times when he was preparing it. He had a man there helping him, but I don't remember his name.

72 Q. Do you know what became of that map and profile after the old company ceased work?

A. No, sir; I do not.

73 Q. Who had possession of the papers of the old company and the Empire Construction Company?

A. The last I knew of them—you mean maps and books?

74 Q. The maps and profiles.

A. Mr. Wilson had them.

(By Mr. CONKLING:)

75 Q. Do you mean of the railroad company or the Empire Construction Company, or both?

A. I meant the Empire Construction Company.

274 76 Q. You have spoken of having obtained a number of the right-of way; who had the custody of the rights of way after they were obtained from these parties, the deeds and contracts?

A. Mr. Wilson; I turned over everything to Mr. Wilson, the chief engineer.

77 Q. Do you know what he did with them?

A. No, sir; I do not; I knew nothing about it, only what he told me.

78 Q. Do you know what line the present road of the St. Louis & Chicago railroad has followed north of the I. & St. L. up to the Sangamon county line?

A. Well, it has followed through this county and into the other county on the original line of survey, the original line as surveyed by the Chicago, Springfield & St. Louis road, and in riding over the road—I have rode over it several times—I should think that it is very near from here into Springfield on that line. Now, I will say here that I know every inch of the land from here into Sangamon county some distance—that is, I can name nearly every farm as I go along; I have been along on foot, and then over Sugar creek, in Sangamon county, and I know where the survey was run over this road, and I should think it was about on the line of the original survey.

79 Q. The road runs along almost on an air line, if not an air line, from Litchfield to Springfield, does it not?

A. Well, I should think there is a crook at or near Sugar creek.

80 Q. Where is Sugar creek?

275 A. That is six miles, in round numbers, this side of Springfield, six or eight miles this side of Springfield. Now, you see this road goes in on the east side of Springfield, and as I understand it about where the depot is in Springfield is north of a point about three-quarters of a mile east of where we sit, from a half to three-quarters of a mile, as I understand it, so there must have been an angle there so as to get into Springfield the way they did.

81 Q. You spoke in your testimony of the old line, of the line of the Chicago, Springfield & St. Louis, after passing on the half-section line which you describe as through North Litchfield, Zanesville, and Harvel townships, making a divergance from that line at the north end of Harvel.

A. Yes; it went cornering through a part of Bois D'Arc township; then took a line north; perhaps it angled there pretty nearly in a northeasterly direction some three miles on to a point about three miles east.

82 Q. Does the present road make that same turn?

A. No, sir; it goes straight up.

83 Q. Now, speaking from the I. & St. L. track in Litchfield up to that point where the old road made a divergence, which you say

is about 18 miles, state whether or not the present road follows the line of the old road.

A. Substantially that line; yes, sir.

84 Q. State whether or not the present road is on that half-section line which you pointed out.

A. Yes, sir.

85 Q. And occupies the same road-bed?

A. As I understand it, it does; yes, sir. I might add here
276 that I don't know but there might have been some little changes—some little changes that I don't know anything about—but I say that it occupies substantially the half-section line.

86 Q. Was there any county road on this half-section line?

A. No, sir; it simply cut through the farms as it went along. It was taken there to avoid the county road; the county road runs on the section line.

87 Q. State whether it was intended to have these half-section lines the center of the road-bed.

A. The half-section line was to be the line of the road-bed, but I think the general idea was to put it on one side, so as not to have to dicker with the farmers that abut each other, but with one man, so that it would run on one side of the half-section line.

88 Q. So you could trade with one man instead of two men?

A. Yes, sir. However, that is not the case all the way. Some plahes the right of way reaches on both sides, but I will explain here that there is a big offset in these townships in places. This map don't show it. Now, you take the north line of Zanesville and the south line of Harvel townships; there is an offset of several rods, so that the road going up here you have to turn east and go several rods west and then go north again in passing from one township to another; there is an offset between the two, so that in attempting to follow the same half-section lines the will necessarily be a little break; some places that will not be on the section line have to run some little distance before they would get on the half-section line again.

277 Cross-examination by Mr. CONKLING:

88 X Q. Mr. Southworth, when were you made president of this company?

A. Well, at was at the organization, I believe.

89 X Q. When did you cease to be president?

A. The record of the meetings would show. I have forgotten whether in May or June.

(The 25th of May the resignation was accepted, at Springfield, 1883.)

91 X Q. Did you have any confection with the company from that time forward?

A. No, sir; not particularly. I assisted.

92 X Q. Were you an officer or a director of the company?

A. No, sir.

93 X Q. Did you have any business relation with the company from that time forward?

A. Nothing more than I assisted Mr. Wilson some about the right of way.

94 X Q. Did you have any relation to the company as attorney after that period?

A. No, sir.

95 X Q. Did you receive any recompense from the company or pay for any service from the company?

A. I think not.

96 X Q. Of any kind after that date?

A. I think not.

97 X Q. Who was attorney for the company after that date?

A. Well, I don't know that they had any.

98 X Q. Who gave legal advice and attended to the legal matters of the company from its organization up to the time that you resigned?

A. What legal advice was given in the suits that were attended to I did it. Now, I speak of suits. We had several injunc-
278 tion suits, and I am inclined to think that was under the old company, the Springfield & St. Louis.

99 X Q. The Springfield & St. Louis was the old company?

A. I am inclined to think we had some suits about the right of way through the town here under the old company. I was the legal adviser during the time I mention while president.

100 X Q. You say you bought several rights of way and took certain contracts for about seven or eight miles, perhaps, of the road. What seven or eight miles was it?

A. Well, most of the way from here to about two miles into Zanesville township, nearly two miles, including Carter's and the Duncan heirs and Rogers. I arranged with Mr. Rogers. I think we took about six acres of him, and that we had a verbal contract with him for about — acres. There were some pieces out not far from nine miles north of here.

101 X Q. What was the first contract north of the I. & St. L. road concerning which you made a contract for the right of way?

A. I made a contract for the right of way as far as it could be done with the Beeler heirs.

102 X Q. Where was that tract?

A. It is the first track outside of the city limits.

103 X Q. Was the contract in writing?

A. I think not, because they were minor heirs.

104 X Q. That was not then reduced to writing?

A. No, sir; let me explain now. The mother had married. Beeler's wife was living with her daughter on the place, and I made the contract with old Mrs. Beeler and her daughter and her daughter's husband.

105 X Q. Did they own the land?

279 A. I think the daughter's children inherited it, and I think the contract was made as far as it could be with them.

106 X Q. It was a verbal contract?

A. It was a verbal contract.

107 X Q. Now, what was the next piece north of the Beeler over which this road run, and what did you do about that?

A. Luther Blackweller's. I had written contracts with him—that is, a half a mile.

108 X Q. That wasn't a deed?

A. No, sir.

109 X Q. Do you know what the contents of that written contract were? I ask whether you know, not what they were.

A. Well, it has gine from me now.

110 X Q. Was it a conditional contract or not?

A. The contract was we should have his land for so much. He made a deed for 68 feet.

111 X Q. Now, were there any conditions as to the time in which it should be paid?

A. I can't say.

112 X Q. The usual form?

A. Yes, sir.

113 X Q. Was it a contract made for the Chicago & Springfield & St. Louis Railroad Company or for the previous company, the Springfield & St. Louis?

A. I think it was made on the form that we got up for that company.

114 X Q The Springfield & St. Louis?

A. No; for the Chicago, Springfield & St. Louis. I think so.

115 X Q. Now, is it a fact that any forms at all were gotten up for the Chicago & Springfield company?

A. I am not clear about that.

280 116 X Q. Is it not probable that you used the old forms of the Springfield and St. Louis?

A. We might have used the old forms and changed them, but it was to the Chicago, Springfield & St. Louis.

117 X Q. Do you recollect whether there was any condition as to time?

A. No, sir; I can't tell.

118 X Q. You can't tell whether there was or not?

A. No, sir; I would not say.

119 X Q. What was done with that contract?

A. I delivered it to Mr. Wilson.

120 X Q. Was there any money paid under that contract?

A. No, sir; I don't think there was; not to my knowledge.

121 X Q. What was the next tract of land over which the road ran?

A. Well, I made arrangements for half of this half section clear across the whole of that half section 21; part of that was made with Mr. Amsden and part of it with a man named Duff; I believe he owned the north half there.

122 X Q. Did those two arrangements carry you across the south half of section 21?

A. Yes, sir.

123 X Q. Who made those arrangements—you?

A. Yes, sir.

124 X Q. What was the evidence of that arrangement—any contract?

A. That was a verbal contract with Amsden. I have forgotten whether it was a verbal contract with Duff or not. When I went out there I went two or three times to see him.

125 X Q. Was there any money paid by you?

A. No, sir; not on either of these.

281 126 X Q. Did they claim to own the land at the time or were they represented by other persons?

A. No, sir; Amsden owned his; Duff's wife owned hers; she was a Hughes.

127 X Q. This was a verbal arrangement with those parties?

A. Yes, sir.

128 X Q. What was the next tract over which the road run?

A. Well, I made a sort of tacit arrangement with Mr. Fisher. Here's a little piece in here (indicating) that I did not.

129 X Q. Right in the center of it?

A. Right in here; it turns in here and goes up there.

130 X Q. Whose was that little piece?

A. That belonged to the Hughes heirs.

131 X Q. Did you make any arrangement about that?

A. No, sir; none at all. This of Fisher's, I did with that.

132 X Q. Did you make any arrangement with him?

A. I had some understanding with him about that, but I don't think there was any positive contract with him about it.

133 X Q. And what was said was a verbal contract?

A. Yes, sir.

134 X Q. There was no positive contract about that?

A. No, sir.

135 X Q. Now, the next tract?

A. Fogleman; I had a written contract with him and with Mr. Shepard, and that I delivered.

136 X Q. A contract similar to that spoken of by you a few minutes ago?

A. Yes, sir.

137 X Q. Did you pay anything?

A. No, sir; I did not.

138 X Q. Do you know whether they were paid anything?

A. I do not.

282 139 X Q. To whom did you hand those contracts?

A. I handed all my contracts to Mr. Wilson.

140 X Q. Over what tracts did the road next run?

A. There is Ritchie. I had a written contract with him.

141 X Q. Did the land belong to Ritchie? Do you know?

A. I guess he owns it. I have never examined the title, but he has claimed to own it a good many years.

142 X Q. What sort of an arrangement did you have with him?

A. A similar arrangement as with Vogleman.

143 X Q. A written contract?

A. Yes, sir; and his included Pearman.

144 X Q. When you say a written contract you don't mean a deed?
A. Oh, no; a contract.
145 X Q. Did you make same arrangement with Pearman?
A. He owned the property.
146 X Q. Was there any money paid on that?
A. No, sir.
147 X Q. The next tract.
A. Well, we had an arrangement with Irving Wells.
148 X Q. Evidenced how?
A. By a written contract in his house.
149 X Q. Did he claim to own it?
A. Yes. He has lived on it a great many years.
150 X Q. Was there any money paid on that?
A. No, sir.

(It is understood the last-mentioned contract, known as the Ritchie contract, was in the northern part of the section 16, in North Litchfield township.)

151 X Q. What was the next contract?
A. Now, I made an arrangement for the south half of sec-
283 tion nine in the same township except what Squire Neal owns.
152 X Q. How much did Squire Neal have of that?
A. Well, I think Squire Neal owns that eighty acres, with the exception of a five-acre lot in the northeast corner of the southwest quarter of section nine.
153 X Q. The Neal tract being the east half of the southeast quarter?
A. Yes.
154 X Q. Now the next.
A. J. M. Ash. I think I had a written contract with him. That is my impression about it and about like the other; no money paid.
155 X Q. In what part of section nine is Ash's tract?
A. The southwest quarter.
156 X Q. The Neal tract; what arrangement did you make as to that?
A. I didn't make any arrangement with Neal.
157 X Q. Over how long a distance did the tract run on Neal's land?
A. I think it run a half a mile, except across that half-acre lot.
158 X Q. You made no arrangement with Neal at all?
A. I don't think I did. We had a good many talks and came to some sort of a tacit arrangement, perhaps.
159 X Q. Over how much of the Neal land did you run?
A. Half a mile.
160 X Q. Was the road one-half on one and one-half on the other?
A. I think that was the arrangement then. The road might have been changed onto one of them. I think their deeds calculated to go right on the line.
161 X Q. Did you make any arrangement for the five-acre tract of *a*lnd in that northeast quarter?

A. I did.

284 162 X Q. What was the character of it?

A. I think I had an arrangement with Mr.——

163 X Q. What was it evidenced by?

A. I think we had a written contract on that. That is my impression.

164 X Q. Did you pay any money?

A. No, sir; no money was paid on it—not be me.

165 X Q. Did you pay any to Ash?

A. No; there was no money paid from this on until you get up to Kelley's.

166 X Q. You say none was paid?

A. None paid by me.

(By Mr. JUDSON:)

167 X Q. You say none was paid?

A. None paid by me.

(By Mr. CONKLING:)

168 X Q. Do you know yourself of any being paid?

A. I do not.

169 X Q. By anybody?

A. No, sir; only a written contract.

170 X Q. Now, what about the south half of the north half of section nine; did you make any arrangement in regard to that?

A. The man who owns the south half of the north half of section nine owns this little five-acre piece in here—that is, in the northeast corner of the southwest quarter of section nine.

171 X Q. Did you make any arrangement with the owner of the south half of the north half of section nine in the same township?

A. Yes, sir.

172 X Q. What was the evidence of that?

A. I think it was under a written contract, but no money was paid.

173 X Q. What about the north half of the north half of section nine in the same township?

A. The same arrangement that was made with Davis.

174 X Q. By a written contract and no money paid as far as you know?

A. No.

285 175 X Q. What about the right of way over the south half of section four, the same township?

A. I had a written contract there with both the owners—with Fisher and with Stripling, being owners of the east and west side of the center.

176 X Q. Were those written contracts?

A. Yes, sir.

177 X Q. Was any money paid?

A. No, sir; not as far as I know.

178 X Q. What about the right of way of the south half of section four, same township?

A. That was Stripling's. I had an arrangement with him.

179 X Q. And with Scott?

A. Yes, sir; a written contract with Scott, I think.

180 X Q. Of the same character?

A. Let me see. I was with Fisher, arranging with him at Fisher's house, and I think Scott came there and made the same arrangement with me that Fisher did, under a written contract, but no money paid as far as I know.

181 X Q. What about the remainder, being the north part of section four, same township? Did you make any arrangement as to that?

A. I didn't make any arrangement, I don't think, with Mrs. Owens. That belongs to minor children. If I made any arrangement it was merely a verbal arrangement. We might have come to terms about it, but the expectation was to condemn it.

182 X Q. That brought you, then, to the township line of North Litchfield?

A. Yes, sir.

183 X Q. Now what was the next one?

A. Zanesville.

184 X Q. What arrangement did you make concerning the right of way of the company over the south half of section 33, in township 16, being Zanesville township?

286 A. I had a written contract for most of that; that property is owned by Squire Parish, and the contract was with him, and on the other side with Snyder.

185 X Q. Written contracts in both cases?

A. Yes, sir.

186 X Q. Any money paid?

A. No, sir.

187 X Q. You have spoken of making contracts with persons lying on each side of the half-section line for several miles back here, and also here (indicating). Did you in all these cases make a contract for half of the right of way that you were getting of each person?

A. It was for whatever we wanted, perhaps half; we were to give so much a mile.

188 X Q. Did these contracts specify the width they were to give you or was it simply left for future adjustment?

A. In some cases. Now, Snyder—I recollect Snyder—we were to give so much a mile for his. Parish, I can't tell exactly what, but we were to pay so much an acre.

189 X Q. But no definite width?

A. No, sir; it was the right of way.

190 X Q. With regard to the persons from who you bought or made these contracts. Was there any specified width named?

A. We were getting a general right of way, 66 feet.

191 X Q. Was the width specified in these contracts, do you know?

A. Well, I would not say. My impression would be they claimed—I know Fisher claimed the line was crooked, and so did

Stripling, and I recollect that I didn't feel I would be justified in getting any specified width because we didn't know exactly where the land was and how much we would take or how much we would want, but we were to pay so much an acre.

287 192 X Q. Was that the case with any below?

A. Well, there we split the farms there, you know.

193 X Q. Now, go back, if you please, to section 33, in Zanesville township.

A. I wish to explain that. I understand that in some of these places there were contracts made for both ways; that if they moved out onto one side a little——

194 X Q. When you say "they" you mean the St. Louis & Chicago railroad?

A. Yes; for instance, I don't know that I understood, except I notices when I went through where I had agreed for the right of way with Irving Wells and with Mr. Ritchie that the right of way seemed to be on Mr. Ritchie's lands, but it was substantially what was contracted for.

195 X Q. For the north half of the south half of section 33, Zanesville township. What arrangement did you make and with whom?

A. My recollection is that Mr. Crawford owns from there up on one side.

196 X Q. From where?

A. From the center of 33 the east side; that he owns this on the east side of the line from the center up to the road coming in from the east.

197 X Q. Don't you mean that Mr. Crawford's land extends from the middle line of the south half of section 33 up to the road, being half a mile?

A. I guess probably it does.

198 X Q. What arrangement did you make with him?

A. His was a written contract.

199 X Q. Was any money paid?

A. No, sir.

200 X Q. Did his land lie on the east side of the half-section line?

A. Yes; along there.

288 201 X Q. Was the contract for half the right of way on his premises?

A. Well, I told him I could not tell what we would want.

202 X Q. Was there any specific width agreed upon with him?

A. For whatever we wanted, is my recollection.

203 X Q. Without any specified number of feet agreed upon?

A. Well, that would be what I would think, and I will tell you what makes me think so, because there was a jog coming from here in (indicating), and it was a little uncertain with me when I was getting it whereabouts that line would be.

204 X Q. What arrangement did you make for the northeast quarter of the southwest quarter of section 33?

A. That was Mr. Rogers'. I made a verbal arrangement with him.

205 X Q. What arrangement did you make concerning the east half of the northwest quarter of section 33?

A. We were to have it for so much a foot, on taking possession of the work, on the north side of it.

206 X Q. Was that under a written contract?

A. There was no written contract with Rogers.

207 X Q. Did Mr. Rogers' line include in this arrangement the southeast quarter of the southwest quarter of section 28 in the same township?

A. Yes, sir; it went across his farm.

208 X Q. Then, from a quarter of a mile north of the south line of section 33 and a quarter of a mile north of the south line of section 28, on the west side of the half-section line, it was a verbal arrangement with Mr. Rogers, was it?

A. Yes, sir; it was a verbal arrangement for all of Mr. Rogers'.

209 X Q. What arrangement did you make for such of the
289 land as the road touched in the southwest quarter of the southeast quarter of section 28?

A. I think that was Mr. Crawford's along there.

210 X Q. Then Rogers' land included also the northwest quarter of the northeast quarter of section 33 and the southwest quarter of the southeast quarter of section 28. That was a verbal contract also, was it?

A. I think so. Well, I can't tell about that. I think that is Rogers' land, too.

211 X Q. Then you think the northwest quarter of the southeast quarter of section 28 was also included in Rogers' agreement?

A. Yes, sir.

212 X Q. Verbally?

A. Yes. I know under that agreement we went on and took possession and graded along in front of his house and north of his house; a heavy grade.

213 X Q. What about the northeast quarter of the southwest quarter of section 28, on the west side of the half-section line?

A. Well, I think we were to get between six and seven acres of Rogers' there. I am confused about Rogers and Kelley here.

214 X Q. I will ask you this question: What arrangement did you make with Mr. Kelley for passing over such land as he had in section 28?

A. Well, I think we bought that and paid for it.

215 X Q. And how was that purchase evidenced, by what sort of papers?

A. By warranty or quitclaim. I am inclined to think a warranty.

216 X Q. Do you know where the quitclaim or warranty deed is?

A. Well, they were all handed over to Mr. Wilson, and I don't know what became of them.

217 X Q. Who paid Mr. Kelley?

290 A. I paid Mr. Kelley in a check.

218 X Q. Who signed that check?

A. Mr. Wilson.

219 X Q. On what bank was it drawn?

A. I think all the checks were drawn, my impression would be, on Beach, Davis & Co.

220 X Q. Who handed you that check?

A. Mr. Wilson.

221 X Q. Who drew the deed?

A. I think I did.

222 X Q. Were you at that time president of the road?

A. Well, I think I was.

223 X Q. When was it you bought this from Mr. Kelley?

A. Well, it was right along there; I can't tell you now, at this distance of time, exactly.

224 X Q. Who was treasurer of the company at that time?

A. Mr. Beach.

225 X Q. Did the Chicago, Springfield & St. Louis Railroad Company at that time have any funds?

A. No, sir.

226 X Q. Do you know whose money it was that paid for this?

A. No; I do not; I suppose it came from Mr. Wing.

227 X Q. Do you know whether or not the Empire Construction Company furnished the money which paid for this right of way?

A. Well, it purported to have come through them.

228 X Q. That was your understanding?

A. Yes; it may be, and I think that the checks were given through Mr. Wilson; that is my recollection.

229 X Q. But it was not the money of the Chicago, Springfield & St. Louis railroad?

A. No.

230 X Q. Now, from what point to what point in section 28 does the Kelley land run according to the best of your recollection?

A. The Kelley tract included the northeast quarter of the southwest quarter of section 28 and the southeast quarter of
291 the northwest quarter of section 28, the contract covering a strip on the east side of those quarters.

231 X Q. Now, was the right of way for which this deed was given a half road or a whole road?

A. I think it was understood at the time that part of that was to come off of Rogers' on the line there.

232 X Q. Lying on the east side of the half-section line?

A. I think we were on the line there.

233 X Q. Did you make any arrangement with persons on the other side of the half-section line east of Kelley for such interest as they had?

A. Well, it was with Rogers. Rogers, I think, owns the Stewart land in here; I wouldn't be positive about that.

234 X Q. That was included in the same verbal arrangement, as far as you recollect, that you have referred to before with Rogers?

A. Yes; we took possession of Rogers and worked him through in front of his house and did some heavy work down on the creek, on the bridge there.

235 X Q. What arrangement was made for passing over the northeast quarter of the northwest quarter of section 28?

A. I would not be positive about that.

236 X Q. What arrangement did you make about the northwest quarter of the northeast quarter of section 28?

A. I can't tell.

237 X Q. What arrangement, if any, did you make about the east half of the southwest quarter of section 21 in the same township?

A. I am inclined to think we have got up to the Carter
292 line, or to the Wanger, as it used to be. I will not say what arrangement we did make, or whether we did anything.

238 X Q. What arrangement did you make concerning the right of way over the west half of the southeast quarter of section 21?

A. Well, after we got above Kelley's—Kelley's land—I made the arrangement, depositing the money for the Duncan heirs, and it was pretty near here, but I can't tell which tract it was now.

239 X Q. Do you know what tract was the Duncan tract?

A. No; I can't tell now.

240 X Q. What was the arrangement made with the Duncan heirs; was it written or verbal?

A. There was a written contract about it.

241 X Q. With whom?

A. With the grandfather of the children—the grandfather of the children. He was either guardian of the children or we had an understanding that the money was put in the bank.

242 X Q. What do you mean by "put in the bank"?

A. It was put in the bank subject to condemnation.

243 X Q. Who put that money in the bank?

A. Through Mr. Wilson. I was there when it was put in, I know, and drew the contract.

244 X Q. Was it the money of the Springfield, Chicago & St. Louis Railroad Company that was put in?

A. Mr. Wilson handled it. I suppose he got it from Mr. Wing as the representative of the Empire Construction Company.

245 X Q. Did you make any arrangement at all, as far as you know, for a right of way for any part over the southeast
293 quarter of section 21 other than the arrangement with the Duncan heirs?

A. Not that I have a recollection of. I will not be positive that — is the Duncan heirs, because there is nothing here to show it.

246 X Q. What arrangement did you make concerning the right of way over the east half of the northwest quarter of section 21?

A. Well, I should think that I bought that of Mr. Carter. All I know is I bought four acres of him, but I can't locate it exactly there now, because there is nothing now for me to locate it by, but I should say the bulk of it was the Wagner place.

247 X Q. Can you say anything definitely about obtaining the right of way over any part of the east half of the northwest quarter of section 21?

A. I cannot.

248 X Q. What arrangement did you make concerning the right of way over the west half of the northwest quarter of section 21?

A. I didn't do nothing further than that north.

249 X Q. Did you make any arrangement of any kind for any rights of way north of section 21, in township 10 north, range 5 west, being Zanesville township?

A. I don't think I did.

250 X Q. Have you any personal knowledge of obtaining the right of way or in what manner it was obtained north of that point?

A. I know they went on and did some work.

251 X Q. No; I mean in the matter of obtaining the right of way.

A. No; I have not, except, perhaps, I have a knowledge of some of the Wagner's up there.

252 X Q. Well, where?

A. I don't know which tract it was.

253 X Q. Was it in Zanesville township or Havel?

A. There was an injunction got out in Zanesville town-
294 ship, I think it was; but I can't say positively.

254 X Q. Then to the best of your recollection you know nothing of your own personal knowledge about obtaining the right of way north of said section 21?

A. No, sir; no; I don't know anything about this right of way from this up to Harvel township.

255 X Q. Do you know anything about the right of way and how it was obtained and by whom through Harvel township?

A. Oh, I know nothing about it, only I sort of went along there and sort of bargained with them. I didn't have any written contract with them.

256 X Q. But such right of way as you have now referred to as having obtained in Harvel township you say you bargained for in a sort of verbal way?

A. Yes, sir.

257 X Q. But there was no written contract nor deeds?

A. No; I didn't make any positive contract with anybody in Harvel township, I don't think.

258 X Q. And you have no knowledge of any positive arrangement?

A. No, sir; except here, I think, in Harvel township there was an injunction got put against me and others to restrain us from going across Le Roy Wagner's land, and I was taken into court on it and others with me, nearly all the officers of the company, and I think it was compromised and the land paid for, but I can't tell now what was the arrangement nor how much.

259 X Q. You don't know how it was evidenced?

A. No, sir; I do not.

260 X Q. And you don't know anything about it except in a general way?

295 A. No, sir; there was work done along up there, grading,

but I don't know what it was. Johnson can tell you all about that.

261 X Q. I will direct your attention to the line running south from Litchfield. Please state what was the evidence of any arrangement that you made with Jacob Mauck.

A. I didn't make any arrangement with him.

262 X Q. Who came next south from Mauck?

A. There is the city; the city owns a piece in there.

264 X Q. Is that city tract in the northwest quarter of section nine of South Litchfield township?

A. Well, the city owns a little piece there; reservoir property, I think. We got that in a quarter section.

265 X Q. What arrangement was made for the passage of the road over that?

A. I think we got the city—well, I had an arrangement, perhaps, by a resolution or in some way. I don't think there is any deed to it.

266 X Q. Was it a verbal agreement or a resolution of the city council?

A. My impression would be now that it was a resolution from the city council.

267 X Q. But no deed?

A. No; there was an ordi*an*nce of the city.

268 X Q. What is the next tract, if you please?

A. Mr. Smith, I think, has a piece in there.

269 X Q. What arrangement did you make with him?

A. Well, I made an arrangement with him that we should go across his — by putting a switch there, I think.

270 X Q. Was that verbal or in writing?

A. Well, the work was done and Mr. Wilson, he closed it
296 up with him. I don't know what it was.

271 X Q. You don't know whether it was verbal or in writing?

A. No, sir; I understood that they were to put in a track there for him.

272 X Q. What was the next tract?

A. That was the Cheny heirs.

273 X Q. Please show us that on the map.

A. It is a piece of land right in there (indicating) where Briggs is. (Part of the northwest quarter of section 9.)

274 X Q. With whom did you make that arrangement?

A. With the widow of Cheney, deceased; the mother of the children.

275 X Q. What was the character, written or not?

A. Yes; a deed. Mr. Wilson deeded to her a piece of land over on the other side—I think on the other side of the Wabash—that he got of Barrett with the understanding—there was a written agreement—that this property should be condemned and that she would be satisfied.

276 X Q. Did Barrett make a deed?

A. He made a deed to Wilson, and Wilson made it to the heirs of Cheney, deceased; that is my best recollection.

277 X Q. Now, the next tract?
A. The next tract is Briggs'.
278 X Q. In the same quarter section?
A. I think Briggs' is right in there?
279 X Q. What arrangement was made with Briggs; written or verbal?
A. He gave a deed with the written contract that he was to have a switch. The hundred dollars was paid to him and they were to build him a switch besides.
297 280 X Q. Who paid him the $100?
A. Mr. Wilson, I think; I am positive.
281 X Q. Whose money was it; the same as before?
A. I suppose so.
282 X Q. From the Empire Construction Company?
A. The money that he had charge of.
283 X Q. What was done with the deed?
A. Mr. Wilson had it.
284 X Q. What arrangement was made concerning going over the east half of the southeast quarter *If* section 8, South Litchfield township?
A. With the exception of that little corner in there; that was with old Henry Gardner; paid him $50 an acre.
285 X Q. How much was the purchase price?
A. Two hundred dollars, I think.
286 X Q. Who paid him the money?
A. I did.
287 X Q. From whom did you receive it?
A. Well, I paid him the money; I either paid it to him in money or else gave him a check.
288 X Q. From whom did you receive it?
A. I received it through Mr. Wilson.
289 X Q. The same character of money as before?
A. Yes, sir.
290 X Q. From the same source as before, probably?
A. Well, I don't know what source any of it came from, only as he was acting for the Empire Construction Company and the chief engineer of this road, acting under the construction company, and he furnished the money; I don't know where he got it.
291 X Q. It was not furnished by the Chicago, Springfield & St. Louis Railroad Company?
A. No; not to my knowledge.
298 292 X Q. If it had been you would have known it?
A. Probably I would.
293 X Q. What is the tract next west?
A. That little bit of a corner, it is more than you would naturally suppose; paid $50 for that to a man named Meisenheimer; had a deed for that. I drew it myself, and say the same in regard to the money there as I have before.
294 X Q. Now, where is the next?
A. Well, I think that is from one of the Brokaws.

295 X Q. Being over the west half of the northeast quarter of section 17?

A. Yes, sir.

296 X Q. What arrangement did you make in regard to that?

A. Paid for that, I think, $100 an acre.

297 X Q. And the total purchase price?

A. Well, about $100 an acre, and I think we paid him $400. Possibly I may be mistaken, but my opinion is I paid him right along that money.

298 X Q. Did you receive that money from the same source as before?

A. The same; yes, sir.

299 X Q. Now, the next tract?

A. The next tract we bought from one of the Brokaws.

300 X Q. Being across the south part of section 17?

A. Yes, sir.

301 X Q. How much did you pay him?

A. I think I paid him $60 an acre.

302 X Q. About how much altogether?

A. It seems to me about $240. Now, you see, it is hard to testify from memory in this way, and I may be badly off, but I am pretty sure I paid him $60 an acre.

303 X Q. What was given for that money?

A. A deed.

299 304 X Q. Did that money come from the same source and person?

A. Yes, sir.

305 X Q. What was the next?

A. Well, I didn't go any further; Mr. Keyser attended to the balance of it.

306 X Q. Then, have you any personal knowledge under what sort of contracts, deeds, or agreements the right of way was obtained south of the south line of section 17, in South Litchfield?

A. No further knowledge except Mr. Keyser reported to me as president of the road what he had done in obtaining the right of way.

307 X Q. During the time that these several rights of way of which you have testified were being obtained was the Chicago, Springfield & St. Louis Railroad Company itself building the road?

A. It was being built by the construction company under a contract with the railroad company.

308 X Q. Is this contract that you refer to the same contract that is set out at length in the records of the Chicago, Springfield & St. Louis Railroad Company already introduced in evidence?

A. Yes, sir.

309 X Q. Were these rights of way obtained, so far as they were obtained, in accordance with that contract, as far as you know?

A. I think so. They were contracts for the right of way and were all made with the railroad company.

310 X Q. I ask whether they were under this contract; was it intended——

A. Oh, yes.

311 X Q. They were bought and intended to be paid for under this contract, whatever the terms were?

A. Yes, sir.

300 212 X Q. Did the Chicago, Springfield & St. Louis Railroad Company make any of the grading that was made upon any of this right of way itself?

A. It was all done, I think, by the construction company. Well, it was done by the contractors who contracted with the construction company, as I understood it.

313 X Q. Then when you said in your examination-in-chief that the Chicago, Springfield & St. Louis Railroad Company made the grade over this you did not mean the company did it itself, but only through the Empire Construction Company?

A. That is what I meant.

214 X Q. Did the Springfield & St. Louis Company by itself or any one else at any time do any grading along this right of way you have spoken of?

A. No, sir; they never done any grading; only surveyed.

315 X Q. When did you first see the maps, profiles, and surveys of the line that was proposed to be built by the Chicago, Springfield & St. Louis railroad?

A. Well, I can't tell you. They were brought here. I saw them in St. Louis and I saw them here.

316 X Q. In whose hands did you see them in St. Louis?

A. In the chief engineer's.

317 X Q. What was his name?

A. Wilson. I went in his office and he showed me them; an hour at one time.

318 X Q. Do you know who got up these surveys?

A. The surveys?

COUNSEL: Yes.

A. Why, Mr. Wilson was the chief engineer, and he had the work done in the office there.

319 X Q. But who made the surveys—that is, went over the land?

A. He had one or two men in there at work on the drawings—in the office.

301 320 X Q. You don't understand me. Who made the survey for the line of the road proposed to be built by the Chicago, Springfield & St. Louis Railroad Company?

A. The first survey was made—the original survey was made by the Springfield & St. Louis Railroad Company. Then Mr. Wilson was hired as chief engineer for the Chicago, Springfield & St. Louis, and then he made the survey or it was done under his direction.

321 X Q. Did he make the survey alone?

A. I don't know whether he did or not. He has a corps of engineers from St. Louis.

322 X Q. Isn't it a fact that the surveys, profiles, and maps that you saw in St. Louis and afterwards here were originally made for the Springfield & St. Louis Railroad Company?

A. I saw them, but he had new ones.

323 X Q. Were they not copies from the old ones?

A. Well, they might have been.

324 X Q. And not profiles and maps from new surveys?

A. He might have made copies. That I can't tell you.

325 X Q. Have you any of the contracts in your possession for the right of way you have referred to?

A. I have not.

326 X Q. Have you seen any of them of late?

A. I have not seen any of them since Mr. Wilson left here, in the fall of 1883, that I recollect.

Redirect examination by Mr. JUDSON:

327 Q. You answered in several cases that no money was paid for certain rights of way. You mean to be understood by that that you didn't pay the money, do you not?

A. I did not; no; I turned over the contracts to Mr. Wilson.

302 328 Q. But whether money was paid in those particular cases by any one else for the construction company you don't know?

A. No; I don't know.

329 Q. I believe you testified on your direct examination in a number of cases north of the I. & St. L. track the rights of way were negotiated for by Mr. Johnson?

A. Well, yes, sir; he was at work before he came on here to work under his contract. He worked up in Harvel and Bois D'Arc townships.

330 Q. Did he do any work in Zanesville and North Litchfield—that is, negotiated any rights of way in Zanesville and North Litchfield?

A. He might in Zanesville, but I don't think he did in North Litchfield.

331 Q. Now, you spoke in some cases of no written agreement being made. State whether or not in any case you had an oral license for the company through this contractor to go ahead and take possession and go to work.

Counsel for the defendant- objects to the question as embodying a legal conclusion.

A. Well, we had oral contracts with Mr. Rogers—I don't recollect with anybody else—when we took possession of his property, but there is one piece of property now I might have described. I think of it now. I remember we paid money on it and it is in Zanesville township. It is that road (indicating). We occupied that road from there up to there (indicating) and we gave $100 for it. It is in section 33 of Zanesville township, in the northeast quarter of the northwest quarter of section 33 of Zanesville township. That

303 road, my impression is. It was as much as $100 I paid in money for it.

332 Q. Now, all this money paid was furnished by the Empire Construction Company under the contract, was it not?

A. I understood it to be so.

333 X Q. But the railroad company didn't undertake under that contract to procure the right of way, did it?

A. No, sir; only in the way I have already spoken of—under the contract.

334 X Q. You might examine these forms which I now show you, which were executed for the Springfield & St. Louis Railroad Company, and see if those are similar to the ones that you made use of.

A. Yes, sir; and got up for the first company.

(The complainants' forms referred to and shown to the witness are marked Exhibits 10 and 11.)

Counsel for the defendant- objects to the introduction of said forms in evidence as irrelevant and incompetent.

335 X Q. Now, do you remember whether those printed blanks that purport to be for the rights of way of the Springfield & St. Louis Railroad Company were the same that you used changing the form of the name or not?

A. We changed some of those blanks, but I am under the impression that there were other blanks also used with the name of the Chicago, Springfield & St. Louis Railroad Company in. It seems to me that way, but I would not say positive.

336 X Q. Now, in the case of these deeds you mentioned. In some cases deeds were made out?

A. Yes, sir.

337 Q. Who was the guarantee in those deeds?

304 Counsel for the defendant- objects.

A. The deeds were made to the Chicago, Springfield & St. Louis Railroad Company.

338 Q. And, as I understand you, in all these contracts that you took the contracting party in the contract was the Chicago, Springfield & St. Louis Railroad Company?

Counsel for the defendant- objected as heretofore.

A. Yes, sir; I might say here that it is possible that I got some contracts, some of these contracts, I wouldn't be positive, for the Springfield & St. Louis railroad. I may have got some of them that way.

339 Q. That is, under those forms?

A. Yes; I might have got some of them under those forms, but I think when I did I changed them to the other by the consent of the parties. But it is a good while ago and I can't recollect distinctly, not charging my mind with it much.

340 Q. Did any of these parties agree to give the right of way without compensation for the sake of having the road built?

Counsel for the defendant- objected to any evidence as to what the agreements were. Nothing of that kind was asked on the cross-examination.

341 Q. I don't ask as to the payment of the money, but I ask whether in all cases the parties insisted on the payment of the money.

Counsel for the defendant objected to the question as heretofore.

A. I don't think there was any of them proposed to give
305 in North Litchfield or South Litchfield township, neither of them. I don't think any was given until you get out, pretty well out.

342 Q. How was it as you got out?

A. Well, up in Harvel and Bois D'Arc townships there were some given.

343 Q. Land was not so valuable up there?

A. Well, off from the railroad, and they needed it more.

Recross-examination by Mr. CONKLING:

344 X Q. Mr. Southworth, did you take all these contracts you have referred to to the Chicago, Springfield & St. Louis Railroad Company?

A. I think I did; I took them all to them, to that company. If any were taken to the Springfield & St. Louis I think they were afterwards changed by the consent of parties.

345 X Q. Is it not true now that some of those were taken to the Empire Construction Company?

A. I never took them to the Empire Construction Company.

346 X Q. Are you positive about that?

A. I am sure I never did.

347 X Q. After taking these different contracts and deeds you handed them to Mr. Wilson?

A. All of them.

348 X Q. Do you know what Mr. Wilson did with the-?

A. I do not.

349 X Q. Who was the secretary of your company during the time you were taking these papers?

A. Mr. Atterbury, I think.

350 X Q. Did you hand any of these papers concerning the right of way to him?

A. I don't think I did; Mr. Wilson was the general manager.

306 351 X Q. Was he the general manager?

A. Well, Mr. Wilson; yes.

352 X Q. Was he, or was he the engineer?

A. Well, he was the engineer and was paymaster for the rights of way, and everything was done according to his orders and by his orders.

353 X Q. Wasn't he in doing these things acting for the Empire Construction Company?

A. I suppose he was under Mr. Wing.

(By Mr. JUDSON:)

364 X Q. Did Mr. Atterbury, as secretary of the railroad company, have anything to do with the construction of the railroad?

A. Not that I know of.

Signature waived.

At this point, by consent, the further taking of testimony in this cause was adjourned, subject to notice.

307 UNITED STATES OF AMERICA, *Eastern District of Missouri*, } ss:

I, L. L. Walbridge, special examiner, duly appointed by the United States circuit court in and for the southern district of Illinois for the purpose of taking testimony in the above-entitled cause, hereby certify that on the 12th day of January, 1888, at the office of Messrs. Atterbury & Southworth, Litchfield, Illinois, I was attended by F. N. Judson, Esq., and J. H. Atterbury, Esq., counsel for the complainants in the above-entitled cause, and by C. L. Conkling, Esq., attorney for the defendants in said cause, and that I proceeded to take the testimony of Duncan C. Best, James Kelley, W. B. Carter, J. H. Atterbury, Henry H. Beach, John J. McLean, and E. Southworth.

That it was then and there agreed by the counsel representing the parties to said cause that the testimony of said witnesses might be taken in short-hand and that my transcript of said short-hand notes might be read in evidence on the trial of said cause with the same force and effect, to all intents and purposes, as if the same had been subscribed to by each of the said deponents.

I further certify that the above is a true and faithful transcript of my short-hand notes of the testimony of the said witnesses, and that I am not of counsel nor attorney for either of the parties to the suit in controversy or in any way interested in the result of said suit.

L. L. WALBRIDGE,
Special Examiner.

308 In the Circuit Court of the United States for the Southern District of Illinois.

BELLE N. B. WADE *et al.*
vs.
CHICAGO, SPRINGFIELD AND ST. LOUIS RAILROAD CO. *et al.*

Appearances: For complainants, Frederick N. Judson, Esq.; for defendants, The Chicago, Springfield and St. Louis Railroad Co., St. Louis and Chicago Railway Company, Litchfield and St. Louis Railway Company, and Mercantile Trust Company, Clinton L. Conkling, Esq.

By stipulation of parties, it is agreed that the testimony appointed to be taken on the 12th day of June before L. L. Walbridge as special master and examiner, at the office of Hough, Overall and

Judson, 417 Olive street, city of St. Louis, Missouri, on behalf of complainants, in the above-entitled cause, may be taken on the 14th day of June, 1888, at the same place, before George Brown, commissioner of the United States circuit court, eastern district of Missouri, who, it is agreed, shall act as special examiner for the purpose of taking said testimony in lieu of said L. L. Walbridge, who is unable to act.

Be it remembered that on this 14th day of June, A. D. 1888, I, George Brown, commissioner of the United States circuit court, eastern district of Missouri, duly appointed and qualified as such, did, under the terms of the above stipulation, proceed at the hour of 11 a. m., June 14th, 1888, at the office of Hough, Overall and Judson, to take said testimony on behalf of the complainants in the cause
309 of Belle N. B. Wade *et al.*, complainants, *vs.* Chicago, Springfield and St. Louis Railroad Co. *et al*, defendants, now pending in the circuit court of the United States for the southern district of Illinois, in the presence of Frederick N. Judson, Esq., representing complainants, and C. L. Conkling, Esq., representing the above-named defendants, as follows:

Complainants offer in evidence the stipulation signed by counsel agreeing that certain documents and copies of documents may be admitted in evidence as therein set forth, said stipulation being dated June 1st, 1888; said stipulation, with the documents therein set forth and attached thereto, is marked "Complainants' Exhibit No. 18" by G. Brown, commissioner.

Complainants now offer in evidence deed of trust or mortgage executed by the Chicago, Springfield and St. Louis Railroad Company to the Central Trust Company of New York, as trustee, bearing date May 1st, 1883.

To the introduction of which defendants' attorney, as above, objects for incompetency, immateriality, and irrelevancy, and because the same does not appear to be properly signed, acknowledged, and certified to.

The paper is marked "Complainants' Exhibit No. 19" by the commissioner.

Complainants offer in evidence the contract between the Empire Construction Company and the Chicago, Springfield and St. Louis Railroad Company, dated March 3, 1883.

Counsel for defendants makes the same objection to this as to the last-mentioned exhibit.

The paper is marked "Complainants' Exhibit No. 20" by the commissioner.

It is stipulated and agreed that complainants may withdraw Exhibits No. 19 and No. 20 for return to the Central Trust
310 Company, their custodian, on demand by said Central Trust Co., on leaving copies thereof duly certified by the examiner, Mr. Brown.

Complainants offer in evidence fifty bonds, numbered "1" to "50," inclusive, each for the sum of one thousand dollars, dated May 1, 1883, executed by the Chicago, Springfield and St. Louis

Railroad Company, first-mortgage bonds, payable in gold coin of the United States not inferior to present standard of value to the Central Trust Company of New York or bearer, thirty years after date, with semi-annual coupons attached for $30.00 each, being at the rate of six per cent. per annum, commencing with coupon payable May 1st, 1884 (coupon No. 1, payable Nov. 1, 1883, not being attached), coupons payable at the American Exchange National Bank, New York, said coupons being numbered from 2 to 60, inclusive, each of said bonds being certified by the certificate of the trustee, the Central Trust Company of New York, on the back thereof, that it is one of 2,500 bonds of one thousand dollars each secured by and mentioned in the mortgage within referred to.

Counsel for defendants objects to the introduction of said bonds on the ground that they are incompetent, immaterial, and irrelevant in this cause; that the same are not properly executed and that no previous foundation has been laid for their introduction as against the said defendants other than the Chicago, Springfield and St. Louis Railroad Company, and it not appearing that the same were issued by due authority.

Said bonds are marked by the commissioner Complainants' Exhibits "21" to "70," inclusive.

It is stipulated and agreed that said bonds and all other exhibits introduced by complainants may be retained by complainants' counsel until the trial of the cause, subject to inspection at
311 Springfield or St. Louis on demand by counsel of defendants.

It is admitted that complainants are the holders of the said bonds and coupons.

WARNER M. HOPKINS, of lawful age, being by me cautioned and sworn to testify the whole truth, and carefully examined, deposeth and saith:

Direct examination by F. N. JUDSON, Esq., for complainants:

1 Q. Where do you reside?

A. In St. Louis.

2 Q. You are one of the complainants in this cause?

A. Yes, sir.

3 Q. Where does your co-complainant, Miss Belle N. Wade, reside?

A. St. Louis.

4 Q. Are you or are you not the holders of the bonds which have just been introduced in evidence?

A. We are.

5 Q. State whether or not you have received payment of any of these coupons.

A. I have received no money on them whatever.

6 Q. Do you know whether or not this railroad company—the Chicago, Springfield and St. Louis Railroad Company—is doing any business?

A. I understand they are.

7 Q. The Chicago, Springfield and St. Louis, not the St. Louis and Chicago.

A. I understood they were in operation.

8 Q. I mean at the present time—the company which executed these bonds.

A. O, no, no; they are not; they are out of existence.

Cross-examination waived.

Signature waived.

It is stipulated and agreed by C. L. Conkling, counsel for the Mercantile Trust Company, that the copy of the record book of the Chicago, Springfield and St. Louis Railroad Company,
312 prepared by L. L. Walbridge, examiner, and introduced in evidence, as by stipulation, in place of the original, may be read in evidence in place of said original, being Exhibit No. 4 of complainants in this cause, all exceptions of whatever character being reserved except as to it being a copy.

Counsel for complainants stated that this closed their proof, unless it should appear thereafter that through inadvertence some matter had been omitted, and which counsel for defendants agreed might be supplied.

UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

I, George Brown, a commissioner of the circuit court of the United States for the eastern district of Missouri, duly appointed and qualified as such and as such duly authorized under the laws of the United States to take depositions for use in the circuit courts of the United States, do certify that under the stipulation of parties hereinbefore set forth (page 1) I acted as examiner on the 14th day of June, 1888, at the office of Hough, Overall and Judson, 417 Olive street, city of St. Louis, Missouri, in the taking of testimony on behalf of complainants in the cause wherein Belle N. B. Wade and others are complainants and The Chicago, Springfield and St. Louis Railroad Co. *et al.* are defendants, pending in the circuit court of the United States for the southern district of Illinois, the complainants being represented by Frederic N. Judson, Esq., and the defendants, The Chicago, Springfield and St. Louis Railroad Co., St. Louis and Chicago Railway Co., Litchfield and St. Louis Railway Company, and Mercantile Trust Company, being represented by Clinton L. Conkling, Esq.; that the witness, Warner M. Hopkins, who
313 was of sound mind and lawful age, was by me duly sworn, previous to the commencement of his examination, to testify the whole truth in the matter in controversy; that his deposition was reduced to writing by me in the presence of the witness from his statements, and that his signature to said deposition was waived by the counsel present.

I further certify that the foregoing is a true and faithful transcript of said deposition and of the other proceedings therein recorded.

I further certify that I am not of counsel or attorney for either

or any of the parties in said deposition or caption named or in any way interested in the event of the said cause named in said caption.

In testimony whereof I hereunto set my hand and official seal this 19th day of June, 1888.

GEO. BROWN,

[SEAL.] *Commissioner Circuit Court of the United States for the Eastern District of Missouri.*

314 It is stipulated and agreed that a copy of the contract made by the Chicago, Springfield & St. Louis Railroad Company with the Empire Construction Company, contained in the records of the Chicago, Springfield & St. Louis Railroad Company (a copy of said records having been admitted in evidence by agreement in lieu of the original book of records), shall be received in evidence as the original contract of said railroad company with said construction company.

1. Complainant offers in evidence a certified copy of the ordinance of the city of Litchfield, numbered three hundred and sixty and entitled "An ordinance granting the Chicago, Springfield & St. Louis Railroad Company right of way over certain streets."

Objection by defendants to the paper generally.

2. Complainants offer also a copy of the notice of acceptance of ordinance number three hundred and sixty by the assignee of the Chicago, Springfield & St. Louis Railroad Company, also duly certified.

Objection by defendants generally; also specifically to the sufficiency of the certification.

3. Complainants offer a certified copy of an ordinance of the city of Litchfield, numbered three hundred and sixty-one, approved March 16, 1883, granting to the Chicago, Springfield & St. Louis Railroad Company right of way over and across the Litchfield reservoir property.

Objection generally by defendants, who also object specifically to all three papers just offered on the ground that copies are
315 not the proper evidence, but that the originals should be produced.

4. Complainants also offer a certified copy of an ordinance of the city of Litchfield, numbered four hundred and thirty-six, approved March 7th, 1885, and entitled "An ordinance extending the effect of ordinance number 360."

Objection by defendants; the same objections, general and special.

(The foregoing papers, as offered by complainants, were marked respectively by the master, in order, Exhibits 12, 13, 14, and 15.)

5. Complainants also offered in evidence a notice to produce certain documents and papers, which notice was served upon Messrs. Conkling & Grout, solicitors for defendants in this cause.

(Marked Exhibit 16.)

Counsel for complainants then asked counsel for defendants, Mr. C. L. Conkling, if he had any of the papers called for by the notice marked Exhibit Number 16, just filed; also in Exhibit Number 5,

7 Q. The Chicago, Springfield and St. Louis, not the St. Louis and Chicago.

A. I understood they were in operation.

8 Q. I mean at the present time—the company which executed these bonds.

A. O, no, no; they are not; they are out of existence.

Cross-examination waived.

Signature waived.

It is stipulated and agreed by C. L. Conkling, counsel for the Mercantile Trust Company, that the copy of the record book of the Chicago, Springfield and St. Louis Railroad Company,
312 prepared by L. L. Walbridge, examiner, and introduced in evidence, as by stipulation, in place of the original, may be read in evidence in place of said original, being Exhibit No. 4 of complainants in this cause, all exceptions of whatever character being reserved except as to it being a copy.

Counsel for complainants stated that this closed their proof, unless it should appear thereafter that through inadvertence some matter had been omitted, and which counsel for defendants agreed might be supplied.

UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

I, George Brown, a commissioner of the circuit court of the United States for the eastern district of Missouri, duly appointed and qualified as such and as such duly authorized under the laws of the United States to take depositions for use in the circuit courts of the United States, do certify that under the stipulation of parties hereinbefore set forth (page 1) I acted as examiner on the 14th day of June, 1888, at the office of Hough, Overall and Judson, 417 Olive street, city of St. Louis, Missouri, in the taking of testimony on behalf of complainants in the cause wherein Belle N. B. Wade and others are complainants and The Chicago, Springfield and St. Louis Railroad Co. *et al.* are defendants, pending in the circuit court of the United States for the southern district of Illinois, the complainants being represented by Frederic N. Judson, Esq., and the defendants, The Chicago, Springfield and St. Louis Railroad Co., St. Louis and Chicago Railway Co., Litchfield and St. Louis Railway Company, and Mercantile Trust Company, being represented by Clinton L. Conkling, Esq.; that the witness, Warner M. Hopkins, who
313 was of sound mind and lawful age, was by me duly sworn, previous to the commencement of his examination, to testify the whole truth in the matter in controversy; that his deposition was reduced to writing by me in the presence of the witness from his statements, and that his signature to said deposition was waived by the counsel present.

I further certify that the foregoing is a true and faithful transcript of said deposition and of the other proceedings therein recorded.

I further certify that I am not of counsel or attorney for either

or any of the parties in said deposition or caption named or in any way interested in the event of the said cause named in said caption.

In testimony whereof I hereunto set my hand and official seal this 19th day of June, 1888.

GEO. BROWN,

[SEAL.] *Commissioner Circuit Court of the United States for the Eastern District of Missouri.*

314 It is stipulated and agreed that a copy of the contract made by the Chicago, Springfield & St. Louis Railroad Company with the Empire Construction Company, contained in the records of the Chicago, Springfield & St. Louis Railroad Company (a copy of said records having been admitted in evidence by agreement in lieu of the original book of records), shall be received in evidence as the original contract of said railroad company with said construction company.

1. Complainant offers in evidence a certified copy of the ordinance of the city of Litchfield, numbered three hundred and sixty and entitled "An ordinance granting the Chicago, Springfield & St. Louis Railroad Company right of way over certain streets."

Objection by defendants to the paper generally.

2. Complainants offer also a copy of the notice of acceptance of ordinance number three hundred and sixty by the assignee of the Chicago, Springfield & St. Louis Railroad Company, also duly certified.

Objection by defendants generally; also specifically to the sufficiency of the certification.

3. Complainants offer a certified copy of an ordinance of the city of Litchfield, numbered three hundred and sixty-one, approved March 16, 1883, granting to the Chicago, Springfield & St. Louis Railroad Company right of way over and across the Litchfield reservoir property.

Objection generally by defendants, who also object specifically to all three papers just offered on the ground that copies are
315 not the proper evidence, but that the originals should be produced.

4. Complainants also offer a certified copy of an ordinance of the city of Litchfield, numbered four hundred and thirty-six, approved March 7th, 1885, and entitled "An ordinance extending the effect of ordinance number 360."

Objection by defendants; the same objections, general and special.

(The foregoing papers, as offered by complainants, were marked respectively by the master, in order, Exhibits 12, 13, 14, and 15.)

5. Complainants also offered in evidence a notice to produce certain documents and papers, which notice was served upon Messrs. Conkling & Grout, solicitors for defendants in this cause.

(Marked Exhibit 16.)

Counsel for complainants then asked counsel for defendants, Mr. C. L. Conkling, if he had any of the papers called for by the notice marked Exhibit Number 16, just filed; also in Exhibit Number 5,

a notice served prior to the last hearing and bearing date Jan. 19, 1888; to which counsel for defendants, Mr. Conkling, replied that counsel for defendants had already replied to the former notice, and, as to the second notice, that counsel for defendants say that the parties in whose possession the papers called for are supposed to be, if they are in existence at all, have been absent, and that therefore counsel have not been able to get any of them, and so, not having the papers in their possession, they are unable at this time to produce any of them.

316 L. S. OLMSTED sworn.

Direct by Mr. JUDSON:

Q. State your name, age, residence, and occupation.

A. My name is L. S. Olmsted; my age is fifty-five; my residence is Jacksonville, Illinois, and my occupation is that of civil engineer.

Q. Are you acquainted with D. L. Wing, president of the St. Louis & Chicago Railway Company?

A. I am.

Q. Have you had any official connection with the building of the road of the St. Louis & Chicago Railway Company or any matters concerning the building of such road; and, if so, what?

A. I was chief engineer of the road for a short time.

Q. Please state the time.

A. I commenced on the fifteenth of May, 1885, and I gave very close attention to it for about a couple of months, and then ran into the office once in awhile and ventilated it and went back again.

Q. Your connection with the company lasted about how long?

A. About two months.

Q. At whose request did you first become connected with the company?

A. I was elected by the board of directors.

Q. Who was president of the company at that time, if you know?

A. I think it was Mr. Brown.

Q. I mean president of the new company—St. Louis & Chicago.

A. I think D. L. Wing. He was the visible manager.

Q. Where was the office of the company at that time; where did you have your headquarters?

317 A. It was in Litchfield, at the corner of State and Ryder streets.

Q. State whether or not any surveys, maps, papers, or contracts for right of way came into your hands while you were thus acting for the St. Louis & Chicago Railway Company which were connected with the work theretofore done for the Chicago, Springfield & St. Louis Railway Company; and, if so, what and under what circumstances.

A. In the office there were books—survey books, profiles, maps, estimates, vouchers, contracts for right of way, and such other papers as naturally would belong to an engineer's office.

Q. What were those papers connected with? Were they connected with the Chicago, Springfield & St. Louis Railroad Company?

A. Yes, sir.

Q. You speak of right of way—contracts for right of way. In what form were they?

A. There were some deeds—some contracts; don't know as I can repeat the form of the contracts, but something about such as we usually see, I guess; I have seen a good many of them. Parties agreed to deed the right of way under certain conditions, certain amount of compensation, some for one dollar, others for a certain amount per acre or a certain amount through a given tract of land.

Objection to testifying to contents of any papers.

Q. Who was the grantee or in whose favor were those contracts made? To whom were they made?

A. My recollection is they were made to the railway company that then existed.

Q. What was that corporate name?

A. Don't know as I can tell; Springfield & St. Louis or something of that kind.

Q. Do you mean the Chicago, Springfield & St. Louis?

A. Yes, sir.

318 Objection to the witness' answer.

Q. Which was it?

A. I think the Chicago, Springfield & St. Louis; have not charged my mind with that.

Q. You spoke of surveys. Were there any surveys of any projected railway to be built?

A. Yes, sir.

Q. Between what points?

A. There were maps and profiles.

Q. What were the terminal points?

A. Litchfield was one and Springfield another.

Q. Were there any profiles of a railroad south of Litchfield?

A. My impression is there were, but I had to deal more directly with those north than south while I was there.

Q. Were there different documents—contracts and deeds of right of way—placed in your hands for any purpose; and, if so, for what purpose; or did you make any examination of them; and, if so, at whose instance and for what purpose?

A. Well, I understood that I was custodian of those papers as engineer, and took possession of them as such—whether expressed or implied—by the direction of Mr. Wing; took hold of them first to familiarize myself with the condition of affairs; went to work adjusting, systematizing, and *tiling* them, and afterwards I made an estimate of the valuation of the property through the aid of those papers and such other information as I could get.

Q. When you say property what property do you refer to?

A. I mean this railway.

Q. At whose instance did you make this valuation?

A. At the request of Mr. Wing.

319 Q. For what purpose was this valuation made?

A. It was made to a committee that I think was called executive committee—made for the purpose of a report to that committee.

Q. Committee of what?

A. Executive committee of the railroad company, I suppose.

Q. What railway company?

A. One we were just discussing—Chicago, Springfield & St. Louis—and I am not certain on that. If I knew the date of that it might refresh my memory—whether that was made to the old company or after the transfer.

Q. I will show you Exhibit Number Two in this case, a certified copy of the articles of incorporation of the St. Louis & Chicago Railway Company. Please state if you remember whether that company had been incorporated at the time of your connection with that railroad at Litchfield.

A. This bears date the fourteenth day of May, '85. My official connection with the road commenced on the fifteenth. I remember its being discussed, but from my own personal knowledge all I know as to the date is what I see here.

Q. Were you shown any receipts and vouchers for money which had been expended either for right of way or for construction of road-bed or otherwise in the construction of the Chicago, Springfield & St. Louis railroad or the railroad of that company at this time?

A. Yes, sir.

Q. By whom were those furnished to you—placed in your hands?

A. By Mr. Wing.

Q. What were you to do with them?

A. I used them in fixing a valuation of the property.

320 Q. What was the purpose of having this valuation on the property?

Mr. CONKLING: If you know.

Q. If you know.

A. Don't know that I know. I assume——

Objection.—Don't want you to assume or guess if you don't know.

Mr. C. C. BROWN: If you heard Mr. Wing say anything about it——

Q. If you know from the officers of the company by whom you were employed you may state.

A. I think it was to make an exhibit to the public or other parties.

Q. Do you know whether or not the building of the road from Litchfield to Springfield was contemplated at that time?

A. It was.

Q. Now, state whether or not you proceeded to make such valuation based upon these several exhibits and documents.

A. I did.

Q. Please examine Exhibit Number Six in this cause—transfer by

the Empire Construction Company to H. H. Cooley & Company. Please examine Exhibit Number Six and the schedule of property purporting therein to be conveyed by the Empire Construction Company to H. H. Cooley & Company and state what, if anything, you know of the valuation therein set forth.

A. I am inclined to think that this statement here is a copy from the report which I made. It looks like my language, and from my recollection that is the sum total.

Q. You say you recal- the sum total there as the total valuation placed by you?

A. Yes, sir; substantially. I remember the hundred and forty-two thousand dollars.

Q. Do you recal- any of the several items in that valuation?

321 A. The item of special value on the Litchfield right of way; I recal- that, as I fixed that.

Objection.—Objection generally to any estimates there as not pertaining to this case.

Q. State whether or not you recal- this conveyance as having been made by the Empire Construction Company to Cooley & Company, which is dated May 26th, '85.

Objection.—The paper shows for itself.

Q. Was it made during your connection with the railroad company?

A. I think it was.

Q. Please state whether or not this valuation of amount expended for engineering right of way, cross-ties and construction, right of way guaranteed, right of way contracted, special value of the Litchfield right of way, and all these items, aggregating a hundred and forty-two thousand and fifteen dollars and eleven cents, was or was not a fair valuation of the property as found there by you for the purpose of utilizing the same for the construction of a railroad from Litchfield to Springfield.

Objection.

A. I believe it to be.

Q. This valuation speaks of right of way acquired by the Empire Construction Company for the Chicago, Springfield & St. Louis Railroad Company between Litchfield, Illinois, and Springfield, Illinois, estimated, as per vouchers, to be of the value of four thousand seven hundred and eighty-five dollars and forty cents.

322 Please state what is meant there by vouchers, if you recollect.

A. I don't recollect. My impression is there were some receipts—evidences that they had been paid—some evidence of the moneys having been paid for right of way.

Q. Do you remember the fact that evidences of payment for right of way were shown you?

A. Don't now remember it, but I know myself well enough to know that I shouldn't have used that language if it didn't mean what it says.

Objection.

Q. The statement is made — two thousand five hundred and forty-six dollars as per vouchers for cross-ties between Litchfield and Springfield. Were you shown vouchers for cross-ties?

A. I was. I remember that distinctly.

Q. Vouchers for embankments, excavations in the construction of the road between Litchfield and Springfield by the Empire Construction Company, as per vouchers, amounting to seven thousand one hundred and thirty-two dollars and seven cents. Were vouchers shown you?

A. Yes, sir; if I say vouchers.

Objection generally.

Q. Right of way guaranteed and right of way contracted for, several separate estimates being made for the two. Can you state what is meant by that?

A. Right of way contracted for I should explain at this date as being contracts I saw for right of way; and right of way guaranteed, I don't now know what that meant, but I presume some parties had guaranteed right of way or I was satisfied that right of way was guaranteed by individuals or communities. You know that
323 is frequently done.

Objection to the presumption of the witness.

Q. Reference is made to right of way in Litchfield acquired by the Empire Construction Company for right of way for the Chicago, Springfield & St. Louis Railroad Company. State whether or not any city ordinances of Litchfield were shown to you in connection with that.

A. I think there were.

Q. You remember placing a value on the right of way through the city of Litchfield?

A. I do.

Q. Was that valuation made by yourself?

A. Yes, sir.

Q. Upon investigation?

A. Yes, sir.

Q. Did or did not that estimate include right of way over the Litchfield reservoir property?

A. That did not.

Q. Related wholly to the city of Litchfield?

A. Yes, sir.

Q. Reference is made to original surveys and engineering in the construction and location—surveys, estimates, and superintendence of construction of the work between Springfield & Litchfield, as per vouchers, amounting to four thousand six hundred and seventy-two dollars and ninety-three cents. Do you state that vouchers were shown to you concerning those expenditures?

Objection.

A. Yes, sir.

Q. Also reference made to estimates, rights, and advantages accruing to the Empire Construction Company by reason of any contract heretofore existing and resulting from work done and
324 material furnished and money expended included in the term miscellaneous, as per vouchers, amounting to sixteen thousand eight hundred and seventy-six dollars and fifty-six cents. Do you remember that the vouchers were shown you?

Objection.

A. I don't now remember. I presume, though, there were some advantages which had a value by reason of those contracts alluded to.

Objection to the answer.

Q. Were miscellaneous vouchers shown to you or vouchers for what were termed miscellaneous expenses?

A. Yes, sir.

Objection.

Q. In whose custody were all these vouchers, papers, contracts for right of way, and so forth, when you went to Litchfield?

A. They were turned over to me by Mr. D. L. Wing.

Q. Where were they stored—in what place were they?

A. In the office, in Litchfield.

Q. And these valuations and estimates were made by you at whose request?

A. Mr. Wing's.

Q. When you terminated your connection with the railroad company where did you leave all these various documents, maps, and so forth?

A. In the same office where I found them.

Q. In whose custody—who was in control?

A. At the time I left I was in control myself and held the key for several weeks, though there were other keys to the office, and I went there once or twice a week and spent two or three hours, but eventually I turned over the key and sent it to Mr. Wing.

325 Q. At the time you left had any contract been made by the St. Louis & Chicago Railroad Company for the construction of its line between Litchfield and Springfield?

A. A contract had been prepared, as I understand—agreed upon, but, I think, not signed.

Q. State whether or not, at the time you left the employ of the St. Louis & Chicago Railroad Company, that company had made a contract for the construction of its road between Litchfield and Springfield.

A. O, yes, sir; I am of opinion they had.

Q. With whom?

A. H. H. Cooley & Company.

Objection to the opinion of the witness.

Q. Did you know that or not?

A. I think I did. It has been three years ago, and I have had a good many things in my head since.

Q. Do you know who composed the firm of H. H. Cooley & Company?

A. I believe it to be H. H. Cooley, D. L. Wing, and C. H. Wing.

Q. Did you know H. H. Cooley?

A. Never met him.

Q. Know whether he was any relation to D. L. Wing?

A. D. L. Wing said he was his brother-in-law.

Q. Do you know C. H. Wing?

A. Yes, sir.

Q. Who was he?

A. Said to be D. L. Wing's brother.

Q. Who was president of the Empire Construction Company at the time you were connected with the railroad company, and who had charge of the affairs of that company?

A. I think it was D. L. Wing.

Objection to the testimony of Mr. Olmsted concerning Exhibit Number Six, being the paper executed between the Empire Construction Company and H. H. Cooley & Company, and the
326 objection is both general and special, the special being to all of it so far as it seems to be from statements of persons not parties to the suit.

Q. Had any work of construction been commenced at the time you left the company in '85?

A. No, sir.

Q. Do you know whether the subcontract had been made by H. H. Cooley and Mr. Johnson at that time?

A. The subcontract between H. H. Cooley and Mr. Johnson was agreed upon and prepared, but up to about the seventeenth of July I remember it was not signed.

Q. Who prepared the contract of the St. Louis & Chicago Railway Company with Cooley?

A. I am not clear whether I did or not. It was customary for me to write specifications and contracts; whether I prepared that specification or not I don't remember. I am now of opinion that I did prepare it.

Q. Did you prepare the subcontract of H. H. Cooley with Johnson?

A. I did.

Q. Did D. L. Wing make any statement to you as to the purpose of this conveyance of the Empire Construction Company to H. H. Cooley and H. H. Cooley to the St. Louis & Chicago Railway Company?

Objection.

A. I don't remember any specific statement; conversation on the subject frequently.

Q. Did he converse with you on the subject of those conveyances?

A. Yes, sir; to a certain extent.

Q. State whether or not D. L. Wing consulted with you with regard to the valuations to be placed on the property in these conveyances.

327 A. He did.

Objection.

Q. Please examine this map which purports to be a map of a portion of the Chicago, Springfield & St. Louis railroad as surveyed and partially constructed in 1883 and state whether or not that was made by you.

A. I answer yes, sir.

Q. You prepared that map?

A. Yes, sir.

Q. That map I now offer in evidence.

(Map marked by master Exhibit No 16.)

Objection to the exhibit.

Q. I find you have not extended the line of the Chicago, Springfield & St. Louis into Bois D'Arc township. In miles how much does this represent north of Litchfield?

A. Eighteen miles from the nominal centre of the city of Litchfield.

Q. State whether or not this map correctly represents the line of the Chicago, Springfield & St. Louis railroad as surveyed and partially constructed in 1883.

A. It does.

Q. I see that from the middle of section twenty-one in North Litchfield township the line of the Chicago, Springfield & St. Louis appears to run through the middle of the section—centre line of the section up through North Litchfield, Zanesville, and Pitman townships. How is that?

A. It does; runs as shown.

Q. Runs on the half-section line?

A. Yes, sir.

Q. Do you recollect from your examination of the original surveys and maps in the office of the St. Louis & Chicago Rail-

328 way Company when you were employed there in the spring of 1885 as to the actual location of the line of the Chicago, Springfield & St. Louis?

A. My recollection of the location at the time I was there is as shown on this map.

Q. When was this map prepared?

A. Prepared within the last thirty days.

Q. Did you go over the line of the railroad company in preparing this map?

A. I did; not only went over it, but walked over it.

Q. Is there any railroad constructed on the line now?

A. There is.

Q. What railroad is it?

A. I think the name of the road is the St. Louis & Chicago.

Q. Please state what is the position of the St. Louis & Chicago

track from the city of Litchfield north through North Litchfield, Zanesville, and Pitman townships, with reference to the red line indicated upon this map as the line of the Chicago, Springfield & St. Louis railroad.

A. The position is as shown on this map.

Q. That is, the St. Louis & Chicago road is built upon that line?

A. Yes, sir.

Q. Is there any deviation during that whole distance?

A. From what I show here, do you mean?

Q. Any deviation in the present railroad—the St. Louis & Chicago—from the line of the Chicago, Springfield & St. Louis railroad, as shown here on this map.

Mr. C. C. BROWN: Between those two points.

A. I don't think there is.

329 Q. You noted the location of the present railroad in the city of Litchfield?

A. I did.

Q. Upon what street is it?

A. I don't remember the name.

Q. Is it Adams street, or do you remember?

A. I don't remember the name.

Q. State whether or not it is the same or a different location from that of the old road which you found there when you went there in 1885.

A. It is the same.

Q. Did you go over the line of the road in South Litchfield township?

A. I did.

Q. Did you go into Macoupin county?

A. I did.

Q. How far down did you go in making this map?

A. Down to Mount Olive—city or village.

Q. I see a coal shaft noted here; is that at Mount Olive?

A. No, sir; about a mile northeast of Mount Olive.

Q. Did you find a railroad constructed south of Litchfield on the line of the Chicago, Springfield & St. Louis?

A. I did.

Q. Do you know by what name that railroad is known?

A. I suppose it to be the Chicago & St. Louis.

Q. St. Louis & Chicago, do you mean?

A. St. Louis & Chicago—never asked any questions.

Q. State whether or not the railroad that is now constructed and in operation south of Litchfield on that line deviated from the line of the Chicago, Springfield & St. Louis railroad from Litchfield down to Mount Olive.

A. It does not deviate.

330 Q. Reference has been made in one of the ordinances here to the Litchfield reservoir property. Do you know where that is—the general location?

A. Yes, sir; but I have not shown it on this map, I am sorry to say.

Q. Just indicate it by description, if you can.

A. I think it would be in sections three and four, south of Litchfield—no, four and five, not three and four.

Q. It immediately joins the corporate limits, does it not?

A. I don't know.

Q. In going over this line recently can you state what is the width of the road-bed. Is it uniform or does it vary?

A. It is in fair condition.

Q. Does it vary in width or is it uniform?

A. Do you mean the right of way or the road-bed proper?

Q. Road-bed proper.

A. My opinion is it was originally constructed at twelve feet. Am I right, Mr. Johnson?

Mr. B. F. JOHNSON: Twelve feet for all banks under six feet. I guess most of it — six feet.

Mr. C. C. BROWN: Where there was a heavy embankment it was wider?

A. Wider.

Cross-examination by Mr. C. L. CONKLING:

Q. You refer to having seen certain deeds, contracts for right of way, and so on when you took possession of it. Do you state what you do with reference to those papers from general recollection as to what they were or from specific recollection as to any of the papers?

331 A. General, I think.

Q. Were the papers you refer to executed papers or were they simply blank contracts?

A. Many of them were executed.

Q. Did you have anything yourself to do with the taking of them?

A. Nothing.

Q. Do you recollect now the details of any of those papers, as to the terms, conditions, dates, and names?

A. Not specifically.

Q. Can you or can you not state the conditions or limitations of any of those contracts specifically?

A. I cannot. I don't now think of any.

Q. I understood you to say that some of those contracts were conditional contracts. Is that a fact?

A. All contracts are conditional. May I explain that? What I mean by the term conditional is when I agree to convey to you certain right of way upon certain conditions; one of those conditions is made the payment of one dollar or one thousand or whatever we agree on; other conditions were that the line should be in a certain specified place, specifying where it should run. Other times frequently the condition would be that the road should be fenced; in other cases that the road should be completed in a certain time. Those are common to all roads, I reckon.

Q. You couldn't say which were and which were not that the road should be completed in a certain time?

A. No, sir.

Q. You know that there were such conditions?

A. Yes, sir.

Q. Are you positive at this time to whom as grantee those contracts or deeds were given?

332 A. My impression is to the Chicago, Springfield & St. Louis Railroad Company.

Q. Isn't it true that some of them were given to the Springfield and St. Louis Railroad Company?

A. It may be.

Q. Isn't it true that some of those contracts were given to the Empire Construction Company?

A. I can't answer.

Q. You don't mean to say that any of them were not given to the Empire Construction Company, but some of them may have been, though you can't say?

A. May have been. If you will allow me I will tell you what I know about it.

Q. Mr. Judson will give you an opportunity. Do you know of any of these papers, contracts, deeds, or other papers such as you have referred to having been taken away from that office where you say they were at any time after you first took possession of them?

A. I don't think of any being taken away.

Q. You have testified about the firm of H. H. Cooley & Company. Isn't it true that that firm consisted of H. H. Cooley and C. H. Wing, and that D. L. Wing had no part in it?

A. I gave my evidence only as my impression.

Q. Do you mean to say positively that Mr. D. L. Wing was a member of that company?

A. No, sir.

Q. At the time you took possession of these papers and office as engineer was there a contract in existence for the building of the St. Louis & Chicago Railway Company?

A. I couldn't say.

Q. Do you know when the contract between the St. Louis & Chicago Railroad Company and H. H. Cooley & Company was made?

333 A. I would say it was made between the fifteenth or some time prior to the fifteenth of June.

Q. Was that contract made between the St. Louis & Chicago Railway Company and H. H. Cooley & Company?

A. Don't know; can't remember.

Q. You have spoken of a certain contract of the Empire Construction Company? Who was the other party to that contract?

A. Have I spoken of the Empire Construction Company?

Q. Incidentally the Empire Construction Company has been referred to.

A. My remembrance is the Empire Construction Company had a

contract with the Chicago, Springfield & St. Louis Railroad Company.

Q. When was that made; do you recollect?

A. I don't.

Q. At the time you were in charge of the office was there any active work done in the construction of the railroad?

A. There was not—excuse me—repeat the question.

Q. During the time you were in charge of the engineering department of the road and in the two months mentioned was any active work done in the construction of the road under any contract?

A. That is in process of construction, do you mean?

Q. Yes, sir.

A. I answer no.

Q. What contracts at any time during the time you speak of were in existence for the construction of the road?

A. I am of opinion that there was a contract with H. H. Cooley & Company in existence during that two months.

Q. Any one else—any subcontract?

A. None signed that I was advised of. There was a contract agreed upon and prepared.

334 Q. Since you left that office and gave up the position have you had in your possession either the originals or copies of any of the profiles, plats, or surveys of the Chicago, Springfield & St. Louis railroad or of the St. Louis & Chicago railroad?

A. I don't think I ever had one scrap about me pertaining to it. I answer no, sir.

Q. Did you, during the two months you were in the office or at any time while in the active employment of the St. Louis & Chicago Railway Company, run over the line or view the same yourself personally of the old Chicago, Springfield & St. Louis Railroad Company between the points just north of Mount Olive and the city of Springfield?

A. I did not.

Q. Did you of your own knowledge personally know or examine any part of it during that two months or while you were in the employ of the railroad company—any part of the line of the St. Louis & Chicago Railroad Company between the same points?

A. I did.

Q. How much?

A. I remember examining it through and in the immediate vicinity of Litchfield—say two or three miles.

Q. Which way?

A. Either way.

Q. Then it is true that, with the exception of the line through Litchfield and two or three miles either way from Litchfield, during your employment by the railroad company you had no personal knowledge of the line of the St. Louis & Chicago Railroad Company as located actually on the line of the other road?

A. Nothing personally by inspection of the ground.

Q. You refer to Exhibit Number Seventeen being a map
335 which you say you have constructed within the last thirty days, I believe?

A. Yes, sir.

Q. I will ask you whether that map was drawn by you from reference to any prior survey notes, maps, profiles, or documents to any extent.

A. From reference to those?

Q. Yes, sir.

A. It was not.

Q. How, then, did you construct that map?

A. From a personal observation of the ground.

Q. How did you make that personal observation?

A. Made it on foot.

Q. Going from point to point?

A. Walking from Mount Olive as far as this map shows.

Q. Did you have any surveying instruments?

A. Yes, sir.

Q. How many in the party?

A. Two.

Q. Did you do any surveying on that trip?

A. Yes, sir.

Q. Did you run the line with your transit?

A. With my feet.

Q. Did you in passing over that line find any known survey corners?

Q. Most assuredly; what we supposed to be survey corners. We are not responsible for those—presume when there is sufficient amount of evidence around that it is a corner.

Q. How long a time did it take you and this other person to go over this line?

A. We were four days walking over the line.

Q. How many miles?

A. Twenty-six miles or twenty-seven.

Q. Why did you look for and find certain of these assumed survey corners and section corners?

336 A. The plan was, I reckon, to make an accurate map.

Q. Did you change from those corners to any point at all?

A. To the centre of the road.

Q. What?

A. Road-bed of this railway.

Q. You then measured from these corner-stones to the centre of the road-bed of what you now understand to be the St. Louis & Chicago Railroad Company?

A. Yes, sir.

Q. Did you at that time have any memoranda, documents, or papers of any kind which purported to show where the original survey of the Chicago, Springfield & St. Louis Railroad Company was?

A. I didn't.

Q. The- your statement made in your evidence awhile since that

the lines of the two roads within the limits stated coincide is made by you from recollection and not from examination of papers? Is that true?

A. You want the reason for my answering as I did?

Q. I want you to say yes or no.

A. That's an easy question.

Q. (Question read.)

A. I have a general recollection that the original survey from maps shown me in the office while I was in it ran on the half-section line. I know that this line is now as shown on that map.

Q. Here?

A. Yes, sir.

Q. Do you mean to swear now that the original line of the Chicago, Springfield & St. Louis Railroad Company within the limits that you have stated or laid out upon this map is identical with the present line of the St. Louis & Chicago Railroad Company?

A. I mean to say that I believe it is.

337 Q. I want you to say whether you mean to say it is or not.

A. I see no evidence as to the contrary.

Q. I want you to say positively. In your testimony anywhere do you mean to say it positively as a fact that those two lines are identical?

A. I believe they are.

Q. You simply say, then, you believe they are. If they are different in any place you don't know it?

A. Yes, sir.

Q. You don't say positively they are the same, but you believe they are?

A. Well, isn't that all anybody says in fact?

Q. You are the witness.

A. I say this is Mr. Brown's office——

Q. Isn't it a fact that you don't know of your own knowledge positively where the line of the St. Louis & Chicago Railroad Company runs beyond the line through Litchfield and two or three miles on either side?

A. I might amend the answer if you will permit it. By riding on the Wabash road as far as Mount Olive I have seen that it was in close proximity; couldn't say how many inches away; that would add another six to my three.

Q. But as to the part of the road north, what have you to say?

A. I can say that I believe those lines are identical, as much as I believe anything, without varying a single inch.

Q. May not this be the fact, that the Chicago, Springfield & St. Louis line, as originally projected, runs on the same section or half-section line with the right of way partly upon one side of the line and partly upon the other?

A. I can explain that if you will permit. My impression is, the intention of the engineer who located the line——

338 Q. I don't care about his intention.

A. Was to get a straight line on the half-section line. This, however, is true: that there are very few section lines or half-

section lines that are literally straight for a single mile; hence to get a straight track on a section line you are liable to cross it. You can keep substantially on it and still your line might vary a few feet or a few inches.

Q. What you mean to say is that the best of your belief is that the original line of the Chicago, Springfield & St. Louis Railroad Company was run on the half-section line or section line, as the case might be, except where it ran angling, and it might be on the line or crossing it back and forth?

A. I think so.

Redirect by Mr. JUDSON:

Q. You started to explain in your answer as to these contracts for right of way which you found in the office of the railroad when you went there in the spring of '85.

A. I took them, assorted them out, read them over, and filed them away where they belonged; put them in their respective packages, each township in a package by itself; threw some on the right hand and some on the left; found some more valuable than others and used those.

Q. Did you spend much time in the examination of these evidences of property?

A. I spent some time; yes, sir.

Q. Can you say how long?

A. I can't. I thought it was pretty near right, thought I was working for my clients at the time.

Q. With regard to these deeds and contracts for right of way, can you state how large the package was?

339 A. I would assume there were packages of contracts and deeds of the customary legal form, I guess, probably as thick or even thicker than that for the respective townships.

Q. Give it in inches.

A. Two or three inches thick.

Q. For each township?

A. Yes, sir; I should think so.

Q. Kept in a drawer?

A. They were left in a drawer; found some of them in boxes, and so forth; some in an old hat.

Q. Now you spoke of profiles and maps of the old survey. How extensive were those maps—on what scale?

A. I don't remember. I should think the scale was as large as four inches to the mile; probably larger.

Mr. CONKLING: Ask him the scale of this map, Exhibit Seventeen.

A. Two inches to the mile. Those I was asked about were twice the scale of this or perhaps larger. They were extensive maps, prepared with care, skill, and expense.

Cross-examination by Mr. CONKLING:

Q. You spoke about the consideration in certain deeds. Do you know actually of any payments made for these rights of way of your own knowledge?

A. I don't now remember, but I think I have an item for amount paid for right of way. I had some evidence of that or I should not have certified to it.

Q. Don't refer now to anything anybody else said, but something in your own knowledge.

A. I don't now know; three years ago.

340 B. F. JOHNSON sworn.

Direct by Mr. JUDSON:

Q. State your name, age, residence, and occupation.

A. My name is B. F. Johnson. I reside at St. Elmo, Illinois, and my occupation is railroad contractor. (No age recorded.)

Q. In what occupation were you engaged in the spring of '83?

A. Contracting.

Q. Under a firm name or by yourself?

A. The firm name of Johnson Brothers & Faught.

Q. Has that firm name continued to the present time?

A. No, sir; it has been changed into different styles.

Q. State when you first had any connection with the construction of the railroad between Springfield and Litchfield and Litchfield and St. Louis, either the Chicago, Springfield & St. Louis or the St. Louis and Chicago railroad.

A. I had no connection with them in the way of contracting. My contract was with the Empire Construction Company, Johnson Brothers & Faught.

Q. When did you first do any work for the Empire Construction Company?

Objection to any testimony concerning contracts made with the Empire Construction Company or other persons not parties, and let that objection go all the way through.

Q. When was your contract made with the Empire Construction Company, the subcontract?

A. I can't give you the date. It was in the spring of '83.

341 It was in February, I think—it was in March; in the spring of '83 I will answer.

Q. Did you have anything to do with getting rights of way for the Empire Construction Company?

A. No, sir; not for the Empire Construction Company.

Q. For whom did you get rights of way?

A. I got it for the Chicago, Springfield & St. Louis Railroad Company.

Q. Between what points?

A. From six miles south of Springfield to six or eight miles north of Litchfield.

Q. How long were you engaged in getting those rights of way before you went to work on your subcontract?

A. I was in the neighborhood of a month, I suppose.

Q. Employed by whom?

A. J. H. Wilson, chief engineer of the road.

Q. Please look at this map which has been offered in evidence, Exhibit Number Seventeen, and state in what sections or townships indicated on that map you obtained such rights of way.

A. Pitman and Zanesville——

Q. Townships?

A. Yes, sir.

Q. In all the sections?

A. I think I got some in each section.

Q. Any in North Litchfield?

A. No, sir.

Q. Know who got any there?

A. I think Mr. Southworth and Mr. Wilson got that.

Q. Did you get the rights of way in Bois D'Arc township?

A. Yes, sir.

Mr. CONKLING: Where does the old road branch off?

A. Austin (?) township.

Q. After the road turned north where did it go to?

342 A. Turned north on Wells' (?) farm, close to the place called White Oak; went in at the southwest corner; went through the centre of the farm and then turned due north and ran out of Bois D'Arc into Pawnee.

Q. Remember how many contracts you made for right of way in Zanesville and Pitman townships?

A. I don't.

Q. Can you remember any of the parties?

A. Well, I made contracts with several of the Waggoners.

Q. Can you recall the others in Zanesville township as you went north? Was it Kelly or Carpenter?

A. No, sir; not either of those.

Q. Are they in Zanesville?

A. I think so. Major Wilson, I think, got Carpenter, and Mr. Southworth took Kelly's.

Q. Who was the first you obtained in Zanesville—Waggoner?

A. Waggoner's, I think.

Q. Where is Waggoner's farm?

A. Well, there is Waggoner's right here.

Q. Section twenty-eight, in Zanesville?

A. Section twenty-eight. My recollection—but whether at the time I took that contract or not—it appears to me a man by the name of Fisher had some claim on the land, and it was in litigation between Frank Waggoner and Fisher, and I think Fisher gave the contract. Then I can't recollect the names.

Q. Just name those you happen to recollect, remember, in section twenty-one, north of that, in Zanesville.

A. Well, several parties—Wygant, or some such name.

Q. Remember any such man as Hamilton?

A. Yes, sir; contracted with Hamilton, my recollection is, at forty dollars an acre.

343 Q. Remember the large Waggoner estate?

A. Yes, sir.

Q. Where is that?

A. Pitman township.

Q. What part of Pitman?

A. Well, part of that in Zanesville township and part in Pitman township; don't recollect the name of any one; some land in Zanesville and some in Pitman; right where there is a little jog to get onto the land, and then the mother and heirs own land on there for probably a mile. I took contracts with them—free contracts—with the consideration of one dollar in hand paid for benefits to be derived from the construction, and so forth.

Q. In other words, they gave the right of way?

A. Yes, sir.

Q. That took in nearly half of Pitman township?

A. I couldn't say, but I expect it did.

Q. Now about the northern part of Pitman township.

A. Well, there was a man there by the name of Cox, Sedentop, and several others I can't recollect.

Q. To what extent did you get the right of way for the whole road in Zanesville and Pitman?

A. Well, in those two townships I should say from recollection that I had at least three or four fifths of it.

Q. In what part of the township didn't you get the right of way?

A. Scattering; a piece here and there that I couldn't get or where the man was a non-resident; but I got most of it.

A. Pay for any of these?

A. No, sir.

Q. How?

A. Contracts given in this way; don't know that I can quote the contract, but I can give the meaning. For consideration of one dollar and for further consideration of twenty-five dollars
344 per acre we agree, on being tendered the sum of twenty-five dollars per acre for said strip of land, and so forth, and so forth.

Q. You say the Waggoners gave you the right of way free?

Objection.

A. Yes, sir.

Q. Any others give you the right of way free?

A. Yes, sir; several others. I can't mention them. I think Hamilton's was forty dollars an acre; Fisher's I forget; Wygant—I think he was to be paid.

Q. What did you do with these contracts when you got them?

A. Turned them over to Major Wilson or Mr. D. L. Wing; I forget which.

Q. How long were you at this work getting these rights of way?

A. Probably a month or such a matter; had a good deal of success, and did it in less time than I expected.

Q. Who paid you for getting these rights of way?

A. Mr. Wing.

Q. In whose name were they all taken?

Objection.

A. Chicago, Springfield & St. Louis Railway Company.
Q. Railway or railroad?
A. Don't recollect.
Q. When did you commence work in the construction of the road?
A. I think we broke dirt on the third day of April, '83.
Q. This was after you had done this work in obtaining the right of way?
A. Yes, sir.
Q. This work of getting the right of way was done by you individually?
A. Yes, sir.
345 Q. Did you commence on your contract individually or for your company?
A. The company.
Q. Who represented the Empire Company?
A. D. L. Wing was president.
Q. Who attended to the construction?
A. D. L. Wing.
Q. Where was he then living?
A. St. Louis.
Q. Did he have any business in Litchfield?
A. A mill there at the time.
Q. A flouring mill?
A. Yes, sir.
Q. How long were you engaged with the Empire Construction Company?
A. Closed down the seventh day of June.
Q. Same year?
A. Yes, sir.
Q. Did you resume afterward for the Empire Construction Company or under your contract?
A. No, sir; done some work after that.
Q. State when.
A. Can't state the date.
Q. About—same year?
A. Same year—same month, probably.
Q. Then how long did you continue?
A. I couldn't answer that exactly; went on and built bridges and cattle-guards below Litchfield to Mount Olive.
Q. Do grading too?
A. No, sir; didn't do any grading—just ditching and cattle-guards.
Q. Grading had been done before?
A. Yes, sir.
Q. How long were you at that—cattle-guards, and so forth?
A. I think it was some time in August; won't be positive.
Q. Same year?
A. Yes, sir.
346 Q. Did you close up work for the Empire Construction Company?
A. Yes, sir.

Q. And never resumed for the Empire Construction Company?
A. No, sir.
Q. Now, whether any one else did any work for the Empire Construction Company or did you do all that was done for the Empire.
A. I think a man by the name of Condo had a contract for some ties and probably delivered quite a number.
Q. Did your contract include the supplying of ties?
A. A certain amount.
Q. Do you know of any one else doing any work for the Empire Construction Company except this man that furnished ties, in addition to yourself?
A. Not in the way of construction.

Adjourned to 1½ p. m.

Q. Now please state the extent and character of the work done by you for the Empire Construction Company under that contract in '83—first speaking of the part north of the I. & St. L. track in Litchfield—the work actually done by you.
A. Well, we did some grading north of Litchfield; did nothing else but grading north of Litchfield, but the exact amount of that I can't tell.
Q. Can you approximate?
A. According to my recollection, in the neighborhood of a hundred and fifty thousand yards.
Q. Did you furnish ties?
A. Furnished ties delivered in Litchfield, but they were lying there when I left the road.
Q. Had not been laid?
A. No, sir.
347 Q. How many of them were there?
A. Excuse me; you asked me north of Litchfield.
Q. North of the I. & St. L. track.
A. Well, we laid the track, probably, three-quarters through the city of Litchfield, and did somewhere in the neighborhood of a hundred and fifty thousand yards of earth-work.
Q. Did you do any bridging?
A. No, sir.
Q. What amount of ties did you furnish north of the I. & St. L. track?
A. None piled north; all piled south at that time.
Q. You testified this morning to procuring rights of way through Zanesville and Pitman townships?
A. Yes, sir.
Q. Did you enter upon any of this land upon which you had obtained rights of way to do any work on it?
A. Yes, sir.
Q. Now take this map and recal-, as best you can, such parts.
A. Well, I entered on Mr. Rogers' and did work there.
Q. Mention it by sections.
A. Section four, Litchfield township.

Q. North Litchfield?

A. North Litchfield; section thirty-three, Zanesville, and section twenty-eight and section twenty-one, Zanesville.

Q. Did work in all those places?

A. In those sections.

Q. What amount of work did you do in those sections?

A. I couldn't tell you.

Q. Couldn't tell the amount of work?

A. No, sir.

Q. Did you do some work in them all?

A. Yes, sir.

Q. Then about the remaining sections?

A. I don't believe we did any work on Waggoner's land at
348 that time; did some work on Sedentop's—called section sixteen of the railroad—which would be section four of this map in Pitman township.

Q. Section four of the township?

A. Yes, sir.

Q. How much work did you do there? Give it as to the length of the work if you can't give it by yards.

A. Well, I should think we did a half a mile there and maybe more, but I can't tell the exact amount.

Q. Did you make the road-bed?

A. Yes, sir.

Q. And in section four of North Litchfield and in thirty-three, twenty-eight, and twenty-one Zanesville, did you make it there?

A. Yes, sir; done under our contract.

Q. Did you do anything else besides that in Pitman?

A. I think we did patches along.

Q. Taking the whole of these three townships, about how many miles of grading do you think were done?

A. I couldn't answer that. It was done so in patches that I couldn't tell from memory.

Q. How much in proportion to the eighteen miles graded?

A. I don't know. I wouldn't think it would exceed five miles, from the fact that we went in on the heavy work; did the heaviest patches first.

Q. About what would it be in amount approximately?

A. Well, on what we call Wilcox and Church's contract, something over twenty-four thousand yards their estimate; that was there by Kelly's and Carpenter's.

Q. Did you make the road-bed through Kelly's and Carpenter's places?

A. Yes, sir. Then the other I can't give you. Well, there
349 was one other piece—I forget the contract—on Sedentop's place.

Q. In Pitman township?

A. Yes, sir. My recollection, their estimate was twelve or fifteen thousand yards. This other I don't recollect.

Q. Then you picked out the heaviest parts?

A. Yes, sir; always start in that way on a railroad where they have the right of way.

Q. The heaviest work of grading, then, between those two points was done by you, was it not?

Mr. CONKLING: What points?

A. Between Bois D'Arc and Litchfield.

Mr. CONKLING: South side of Bois D'Arc?

A. Yes, sir.

Q. How was this work done with reference to the half-section lines in these townships?

A. Done as near on the half-section line as it could be done; that map is as correct as could be made.

Q. I will ask you now with reference to this map, how does the line intended to represent the Chicago, Springfield & St. Louis road on which you worked as a contractor in '83—how does it represent it?

A. Represents it exactly, as nearly as practicable; sometimes on one side and sometimes on the other. You can't take a compass and run a line and then take a transit and follow it, to save you. Sometimes you will be on the east side and sometimes on the west side, but more times on the east side.

Q. Did you do any work in North Litchfield?

A. I think I did a little there in South Litchfield, in the
350 public road, on Charles Rogers' farm; the amount I don't recollect.

Q. Do you remember the value of this work per yard?

A. We got fifteen cents a yard for it.

Q. Can you approximately estimate the amount of these patches?

A. I can't.

Q. Now, taking the city of Litchfield, state what work was done there, both north and south of the railroad track.

A. North of the I. & St. L. track laid about three-quarters of a mile of track.

Q. What street?

A. Adams street, my recollection.

Q. What did you do south of the I. & St. L. track?

A. Nothing—yes, we did—did some grading on the south side of the I. & St. L. track; in fact we did the grading from south of the mill a short distance to Mount Olive.

Q. By the mill you mean Wing's flouring mill?

A. Yes, sir.

Q. Does this map represent the line of the Chicago, Springfield & St. Louis south of that track?

A. I would like to ask Mr. Olmsted a question: This map don't run to Mount Olive.

Mr. OLMSTED: No, sir. The coal shaft is shown there. I can show you Mount Olive there substantially if you want.

A. It represents the line as far as it is extended.

Q. Now, please state how much you did on that part of the road south of the I. & St. L. track towards St. Louis.

A. We did the grading, all of the grading with the exception of

some in Adams street, in Litchfield—in other words, you might say we did all of the grading from the south side of the mill there a little way to Mount Olive and below there.

351 Q. How many miles of track laid altogether?

A. About three-quarters of a mile, I should judge. I did know the number of feet, but I have forgotten.

Q. Now, state what else you did besides grading.

A. Did the bridging and cattle-guards.

Q. What was the value of the grading you did south of Litchfield, between Litchfield and Mount Olive?

A. I can't tell you; left all that to Brown & Reed, subcontractors, and don't recollect their estimate.

Q. How did that work compare with what you did north?

A. A great deal lighter work. I should judge the work ran ten to twelve thousand yards a mile. Am I right on that, Mr. Olmsted?

Mr. OLMSTED: I think so, sir.

Q. How far did you extend this grading; how far did it go south of Litchfield—to Mount Olive?

A. Yes, sir; and below there.

Q. To Alhambra?

A. No, sir; some work done south.

Q. How many miles from Litchfield?

A. Can't tell you.

Q. Bridged it and made cattle-guards?

A. Yes, sir; to Mount Olive.

Q. Did you have a final settlement with Mr. Wing or the construction company for this work done by you on the subcontracts?

A. Yes, sir.

Q. What was the total amount paid you for that work?

A. Can't tell you exactly.

Q. Can you give about the sum?

A. My recollection is it was something over fifty thousand dollars. We attached the mill; had to give a bond of a hundred

352 and ten thousand dollars, which was double the amount. Mr. Brown was there the day we attached it.

Q. Anything paid you besides that sum?

A. Yes, sir.

Q. That sum upon which you attached?

A. Yes, sir; Mr. Frarey paid us; I don't know whether it was one or three thousand dollars on the first estimate, and that was all we received, but when we attached we attached for the whole amount.

Q. Your service in procuring right of way was not done under this contract at all?

A. No, sir.

Q. Did you have a written contract with the Empire Construction Company?

A. Yes, sir.

Q. Have you a copy of that contract?

A. No, sir.

Q. Could you produce it and hand it to the master?

A. Don't know whether I could or not; couldn't find it the last time I looked for it, and it was my opinion then it was here at Springfield among some papers we had in suit here, but whether it was or not I don't know; it may be at home.

Q. You may look and see if you can find it and if you can attach it here and if we desire a further examination of you upon that that can be arranged afterward. When did you begin work on this property?

A. Our contract was signed on the ninth day of December, '85, I think it was, and we began work two days before Christmas—two or three days.

Q. With whom did you make your second contract?

A. H. H. Cooley & Company.

Q. Who were they?

A. Composed of Carlos Wing and H. H. Cooley.

Q. Who is Carlos Wing?

A. Brother of D. L. Wing.

353 Q. Who is H. H. Cooley?

A. Brother-in-law of D. L. Wing.

Q. Who managed the business and who represented them in their dealings with you?

A. At the commencement, D. L. Wing; at the wind-up, Carlos Wing.

Q. Where does Carlos Wing live?

A. Charleston, Illinois, I believe.

Q. Was he in business there with D. L. Wing?

A. I couldn't say. He was in business there, but whether with D. L. Wing or not I don't know.

Q. Upon which part of the road were you engaged under this contract in '85?

A. From the I. & St. L. road in Litchfield, Illinois, to a point on the Illinois Central or O. & M.; I forget which; in the city limits of Springfield, Illinois.

Q. Did you have anything to do with building the line south of Litchfield?

A. No, sir; not after '83.

Q. How long were you engaged on this subcontract of December, '85, under H. H. Cooley?

A. I think to the fourteenth of October; maybe it was August, but my recollection is it was some time in October, '86.

Q. Was that subcontract with H. H. Cooley in writing?

A. Yes, sir.

Q. Have you a copy of that with you?

A. No, sir; there is a copy on file, I believe, over here, but I haven't it with me.

Q. Where did you commence work under that contract?

A. Commenced right in Litchfield.

Q. Did that contract include the building of the entire road between these points you have mentioned?

A. Yes, sir.

354 Q. Did you undertake to provide right of way?

A. No, sir.
Q. Did you provide the ties?
A. Yes, sir.

Objection to the form of question.

Q. Now state whether or not between Litchfield and Springfield for the St. Louis & Chicago you used to any extent the road-bed which you have testified for the Chicago, Springfield & St. Louis in '83; and, if so, to what extent.
A. I used it up to Bois D'Arc township.
Q. Was there any break in the road—any change in the line of Bois D'Arc township?
A. Yes, sir.
Q. How did the old road run when it got up to Bois D'Arc?
A. Just after it entered Bois D'Arc township it ran in a northerly direction; on an angle, I suppose, but I couldn't give the degrees of the angle; in a northeasterly direction some six or seven miles, according to my recollection, and then turned due north again.
Q. Did you use any work in Sangamon county for the St. Louis & Chicago which you had done for the old Chicago, Springfield & St. Louis road?
A. Where is the south line of Sangamon county? Bois D'Arc is in the other county, isn't it?
Q. Yes, sir.
A. We didn't.
Q. Didn't do any at this end of the line?
A. No, sir.
Mr. C. C. BROWN: You didn't finish the road?
A. No, sir?
Q. Through North Litchfield township, Zanesville and Pitman townships, how does the present line of the St. Louis & Chicago Railway Company compare with the original road-bed of the
355 Chicago, Springfield & St. Louis?
A. It is on the same line.
Q. Same road-bed?
A. Using the same road-bed; varying a little—well, say from six inches to a foot in the centre.
Q. Even where it varied would it or not take in a good part of the old road-bed?
A. It does.
Q. Did you have any conferences with Mr. Wing, the president of the St. Louis & Chicago, before you undertook this work on your subcontract for H. H. Cooley & Company as to the manner in which you should do your work?

Objection to any conversation with Mr. Wing. He has testified it was under contract.

A. Mr. Olmsted, I think, drew the contract. I think he told him to draw it up. Anyhow I think he drew it. After he had drawn it Mr. Wing and I talked it over probably several times, and he wanted some little things changed. Probably we both wanted some changes.

Finally we had agreed on going to Hillsboro'. We went over there, and I believe Mr. Wing didn't get off the train, but Mr. Olmsted did, and the contract was there finished up—wasn't signed at all, but finished up—the details of it—and Mr. Wing went on. I don't recollect having any more conversation with him about it till it was signed.

Q. I believe you say you have searched for your contract and not been able to find it?

A. Not lately; searched for it shortly after I had a conversation with you in St. Louis. I looked for it and looked in one of our bunches of papers; but at the time I didn't recollect whether I had had it up here or not, and I don't yet—don't know whether we
356 had it there at all or not.

Q. Did that contract provide that you should use that old work as far as you could?

Objection.

Q. If the contract should be found it will have to speak for itself, of course. Did our contract provide for the use of the old work?

Objection to the form of the question.

Q. State whether it did or not.

A. The contract reads about like this, is my recollection of it: It shall be built upon the line as partially built by the Empire Construction Company, as near as practicable, or something to that effect.

Q. Did you know why the beginning of the work was delayed from the summer of '85 to the winter? You testified that you didn't begin to break ground till December.

A. Well, didn't sign the contract till the ninth of December; commenced shortly afterwards. I was building a road at Jamestown, New York, at the time; had to give me time to get here and get at it.

Q. Were you present at Litchfield with Mr. Olmsted when he was making the valuation of the old work preparatory to making these contracts?

A. I was not then. I was there a good many times, and he probably asked me a good many questions, but I didn't see him making up any statement; knew he was making up one.

Q. Did you give him any information in regard to the work?

A. I believe I did.

Q. Did you have any conversation with Mr. D. L. Wing
357 in regard to the work done by the Empire Construction Company?

Objection.

A. I don't recollect of any—that is, I can't call it to memory if I did; probably I did have, but I can't call it to memory.

Q. Did you have anything to do with the right of way at all for the St. Louis & Chicago when they resumed work?

A. Only in one case.

Q. Where was that?

A. That was at Mr. Rogers', and Mr. Wing was not satisfied with it, but went out and made his own deal.

Q. What was the trouble with Rogers?

A. Wanted more money than Mr. Wing wanted to pay him. I had agreed to pay him so much. He went out and cut him down—can't say that, but anyhow he went and closed the deal himself.

Q. How with these people in Pitman and Zanesville townships?

A. Know nothing about it.

Q. Did they make any objection to your resuming work on those grades in those townships?

A. I don't know. There were some objections made, but I can't tell what they were or who they were. There were some injunctions run on us a time or two—arrested some of our men, I believe—but about that time I took sick and was away from the work quite a good while—a month and a half, I guess.

Q. In what condition did you find the work on the line of the road-bed as made use of?

A. More or less washed; naturally would be, lying there that length of time; took a good deal of repairing.

Q. I believe you said it was the heaviest part of the work.

A. The heaviest part of the work north up to Bois D'Arc
358 township; heavier work at Sugar creek.

Mr. BROWN: That is not on the line of the new road?

A. No, sir.

Q. Were you able to make use of what work you did?

A. Did make use of it.

Cross-examination by Mr. CONKLING:

Q. In getting this right of way referred to north of I. & St. L. road through the townships of North Litchfield, Zanesville, and Pitman, did you make any payments at all yourself?

A. Not a dollar.

Q. That was done some time in 1883, I believe, first.

A. Yes, sir; I think it was done in January and February, '83.

Q. Do you know, of your own knowledge, of any payments having been made for any of those rights of way?

A. I don't—that is, I never saw any money paid; heard certain men were paid.

Q. Beyond that you don't know?

A. No, sir.

Q. Do you know of your own knowledge who made those payments with reference to rights of way in '83?

A. Nothing, only I heard Mr. Wilson say he made them.

Q. Now, the road branches at Bois D'Arc township, near the south line, don't it—the main line of the old road branches there? Is that correct?

A. Right at the north line of Pitman—south line of Bois D'Arc—the old road branches off and runs in a northeasterly direction.

Q. I understand you to say none of the old line of road was used in the construction of the new where it branches off to Springfield.

359 A. Yes, sir; I said so.

Q. You state that north of the I. & St. L. track, under the original contract for the construction of the Chicago, Springfield & St. Louis Railroad Company made with—who was it?

A. Empire Construction Company.

Q. You had done a hundred and fifty thousand yards of earth-work?

A. About that.

Q. Does that include the work done in Bois D'Arc township and in Sangamon county not used in the construction of the St. Louis & Chicago?

A. Yes, sir; includes all that.

Q. Then this hundred and fifty thousand includes more than was done in the townships of North Litchfield, Zanesville, and Pitman?

A. Certainly.

Q. What variation—how much, so far as you know—is there between the half-section line and the centre of the road-bed of the original survey?

A. Never measured and couldn't tell.

Q. Approximately?

A. Let me understand your question.

Q. About how many feet between the two?

A. I should think, Mr. Conkling, from the centre in some places would be fifty feet to the half-section line; sometimes fifty feet on the east of the half-section line and sometimes fifty feet on the west.

Q. Was the original line as run and surveyed to go in a general way along the half-section line through the townships you have testified about?

A. Sometimes we took half off of one man—man owned a quarter section on the east; then, again, they would take it all
360 off of one side. It was according to how the line ran.

A. That is in regard to the original survey?

A. Yes, sir.

Q. Isn't it true that in some instances the original survey required that half of the line should be taken off of one side and half off the other?

A. Yes, sir.

Q. And the new line as run took off only on one side?

A. Yes, sir.

Q. So in some instances there are points of variation between the rights of way obtained for one road and as used by the other between North Litchfield and the south side of Bois D'Arc?

A. I don't want to answer that till I can answer intelligently. I want to ask first whether it is proper—in making that survey took the same centre line; the line of survey started from the same and ran to the same hubs.

Mr. Olmsted: A hub is a stake driven and marked with a fine point upon it, which is supposed to be permanent, so as not to be disturbed by frost or ordinary farming.

A. It bears some relation to the plumb of the transit.

Mr. OLMSTED: Bears the same relation to a railway line that the marks do on a farm.

A. They followed the same centre line, but instead of giving us the right of way on one side they compelled us sometimes to take all the right of way on one side—the dirt on one side.

Q. You did certain work in the city of Litchfield, on Adams street—grading and about three-quarters of a mile of ties and iron-work?

361 A. Yes, sir.

Q. For the Chicago, Springfield & St. Louis road?

A. No, sir; the Empire Construction Company.

Q. Yes; but on the proposed line of the Chicago, Springfield & St. Louis?

A. Yes, sir.

Q. Is that the same ties and iron subsequently taken up and removed by certain parties in Litchfield prior to the time you made that contract with the St. Louis & Chicago road?

A. Yes, sir.

Q. Then at the time you made your contract—did you make your last contract with the St. Louis & Chicago road?

A. No, sir; with H. H. Cooley & Company.

Q. Then when you laid the track under your contract with H. H. Cooley & Company, in '85 and '6, did you find any ties or iron on Adams street, in the city of Litchfield, north of the I. & St. L. track?

A. No, sir; I didn't.

Q. Then you didn't use in the construction of the new road any iron or ties that had been laid for the old road?

A. No, sir.

Q. Who paid you for the work done under the contract with the Empire Construction Company for the building of the Chicago, Springfield & St. Louis line?

A. We attached the mill of D. L. Wing & Company.

Q. Why did you attach it?

A. Well, he was the owner of that and the largest stockholder. He and his partner were stockholders of the Empire Construction Company, and our attorneys claimed they were personally responsible. Attached the mill, but settled by getting the notes of D. L. Wing & Company endorsed by H. F. Downing.

362 Q. Then I understand you had a contract with the Empire Construction Company to construct a road called the Chicago, Springfield & St. Louis, and under that contract you made road-bed, did grading, as you have testified, through Adams street, in the city of Litchfield, and through North Litchfield, Zanesville, and Pitman townships, also certain work testified to between the I. & St. L. south and Mount Olive, and for that you were to be paid by the Empire Construction Company?

A. Yes, sir.

Q. Did you receive anything from the Empire Construction Company on your contract?

A. On the first estimate Mr. Wing was away—supposed he was in Europe. He had a clerk in St. Louis by the name of Frarey, and

Mr. Frarey came out and gave us one thousand or two thousand, but it has been so long I can't remember.

Q. Was that on the contract with the Empire Construction Company?

A. I think it was.

Q. Afterwards you say you received about fifty-five thousand dollars in notes given by D. L. Wing & Company and endorsed by H. F. Downing?

A. No; I said it amounted to something like fifty thousand, but this other payment was taken off, whatever it was.

Q. Whatever that payment was, was it the balance on your contract—settlement?

A. Yes, sir.

Q. Then this payment, whatever it was, and the notes of D. L. Wing & Company endorsed by H. F. Downing, given in settlement, were not a payment made by the Chicago, Springfield & St. Louis Railroad Company?

A. I want to correct that.

363 Q. State it your own way.

A. Something is brought to my mind now; he got ten thousand of Keizer.

Q. Who did?

A. Wing did.

Q. How got it, borrowed?

A. Borrowed, I reckon.

Q. Borrow it himself?

A. I don't know. When the settlement was agreed on he paid me ten thousand, I believe—either ten or seventeen.

Q. Cash?

A. Cash; the balance was paid in notes; that's where I want to correct myself; the balance was paid in notes by D. L. Wing & Company's milling firm, endorsed by Downing.

Mr. C. C. BROWN: Downing was one of the member of the firm?

A. Yes, sir; Mr. Dixon telegraphed Downing to know if he would authorize the payment of these notes and he answered back he would. Whether that was the endorsement or whether those notes were sent on, it has been so long ago I can't recollect; whether those notes were sent on for Downing's endorsement or whether that telegram was taken for an endorsement I can't say now; anyhow, these notes were taken for the money from the milling firm; took off the attachment so they could put a mortgage on it to pay us.

Q. Were those notes paid?

A. Yes, sir.

Q. Know who paid them?

A. Paid by D. L. Wing & Company.

Q. You had a contract dated December ninth, 1885. Was that a contract with H. H. Cooley & Company under which you constructed the St. Louis & Chicago road?

A. Yes, sir; dated December ninth.

Q. Where is the Rogers place?

A. Right on the north line of North Litchfield township.

364 Q. How far did you go over his place?

A. A mile on one side—half a mile both sides—my recollection.

Q. At that place was there a variation between the old and the new line?

A. If there is I don't know it.

Q. You said that certain objections were made and injunctions got out and some of your men arrested. Do you know why?

A. Because they went on there without having the right of way.

Q. Was that because your men, employees, and subcontractors went on certain rights of way to construct the St. Louis & Chicago railway without having previously obtained the right of way?

A. Yes, sir.

Q. To what extent, proportionately, was the road-bed lying in the three townships of North Litchfield, Zanesville, and Pitman damaged between the time you constructed it originally and the time you used it in building the St. Louis & Chicago?

A. I could not answer that.

Q. Was it fifty per cent.?

A. No, sir.

Q. Would you estimate it as much as twenty-five?

A. Well, I hardly would; something near that, though.

Q. Under your contract with H. H. Cooley & Company for the building of the St. Louis & Chicago, have you been paid?

A. Yes, sir.

Q. Who from?

A. Frank C. Holland & Company, of New York, on a draft drawn by D. L. Wing and approved by D. H. Hodgens, I think is the name, of Charleston.

Redirect by Mr. JUDSON:

Q. When you went back to resume this work between Litchfield and Springfield did you see any of the papers relating to

365 rights of way or maps of the old road, the Chicago, Springfield & St. Louis?

A. Yes, sir.

Q. Where were they?

A. In the engineer's office.

Q. Who was the engineer?

A. Mr. Olmsted was the engineer first. Mr. Kleinbeck was there, however, when I went to do the work.

Q. Did you make your bid on the work when Mr. Olmsted was there?

A. Yes, sir.

Q. Who is present engineer?

A. They haven't any.

Q. Who was there last?

A. Mr. Kleinbeck.

Q. Continued there continuously from the time you did your work?

A. I understand—Mr. Kleinbeck told me so himself—he wasn't working for the St. Louis & Chicago, but for J. C. Morris, the contractor.

Q. That is not important; but he was engineer of the road after Mr. Olmsted?

A. In the position, but I believe Mr. Olmsted was elected by the board and he is chief engineer of the road yet by election and has never resigned.

Q. Where did you see those maps and profiles and contracts for right of way?

A. They were in the office of the engineer in Litchfield.

Q. When did you last see them there?

A. I could not answer that.

Q. Were they there when you went to Litchfield to commence work in December, '85?

A. Yes, sir.

Q. Were they maps then hanging up in the office?

A. No, sir.

Q. Where were they?

A. Rolled up in the box. Mr. Kleinbeck brought them out and they stood on the table quite awhile.

Q. Those were maps of the Chicago, Springfield & St. Louis?

365½ A. Yes, sir.

Q. They were used by you in building the new road?

A. A contractor hardly ever uses a map, but uses profiles, and there were new profiles made by the new company and the old profiles were not used. I think they used the old maps to make the new profiles.

Q. What do you mean by profiles?

A. Showing the levels of the ground—hollows; grade line of the road.

Mr. CONKLING: A vertical section, ain't it?

Mr. OLMSTED: To use a common expression, shows the ups and downs.

Q. When were those new profiles made out?

A. They were started some time in January, '86, I think.

Q. After you had commenced your work?

A. Yes, sir; they were in a hurry to get a "Y" put in, and I think it was a day or two before Christmas—maybe a day after—I went to work and put in that "Y"—a few days after the engineer corps was started and made their surveys for the line of the new profiles.

Q. Do you know what was done with the old contracts for right of way? Did you see them there when Kleinbeck was there?

A. Saw them there; yes, sir.

Q. Where were they kept?

A. Mr. Olmsted had put them in a box—had assorted them out and put them in piles; had each township by itself. Some were in a box and some not. Had a book three-quarters of an inch thick for each township. Then there was a lot of less ones—Zanesville,

Pitman, Bois D'Arc, White Oak—assorted up—laid to one side. When Mr. Kleinbeck came I gave him what I knew. He wanted
366 me to go and take the right of way, but I told him I didn't care about mixing up at all. He went about it himself. What they did with the old contracts I don't know.

Q. When you took your contracts in Pitman and Zanesville did you take them in a book?

A. Most of them were taken in a book.

Q. A book arranged like a check book with stubs?

A. No stubs, but arranged like a check book. Five inches broad, weren't they?

Mr. OLMSTED: Four or five.

Q. And probably fifteen inches long?

—. ——.

Q. When the contract was signed would the owner of the land take one copy?

A. No, sir; I never gave him a copy.

Q. You spoke of the railroad track having been taken up on Adams street—laid your new track on the same bed, did you not?

A. No bed there in the first place, laid right on the street. It was done in a hurry to beat the town board or something. I had my order at ten o'clock in the morning and we laid track all that night till we got it done.

Q. Do you remember what time you had this settlement on this first contract with Mr. Wing and obtained your notes and money?

A. It was on the nineteenth or twenty-ninth, I don't know which, of June. Stopped work on the seventh.

Mr. CONKLING: What year?

A. '83. I think the deal was wound up—signed and everything—on the nineteenth or twenty-ninth of that same month.

Q. Your contract was then surrendered?

A. Yes, sir; cancelled.

367 Q. I have nothing else to ask except that I would like that contract.

A. You have brought something to my mind. When this settlement was made I am not certain those contracts were surrendered.

Mr. CONKLING: Between the Empire Construction Company and Johnson Brothers and Faught?

A. Yes, sir.

Mr. BROWN: You have given the substance?

A. Yes, sir.

Q. Counsel for complainant serves notice on counsel for defendant to produce at the hearing of the cause or at the next hearing before the master the subcontract made by the Empire Construction Company and Johnson Brothers & Faught, for the year 1883, for constructing the road of the Chicago, Springfield & St. Louis Company.

Mr. CONKLING: Counsel for defendants say that they do not accept notice because they are not the proper parties to be notified.

Mr. JUDSON: Counsel for complainants say they serve this notice

to produce that paper and all such documents that were in the possession of the Empire Construction Company were conveyed to the St. Louis & Chicago Railway Company, as shown by Exhibits Six and Seven in evidence. Counsel for complainants also serve notice for the production of a contract made by the St. Louis & Chicago Railway Company with H. H. Cooley & Company and a supplemental contract between the same parties for the construction of the road of the St. Louis & Chicago Railway Company, between H. H. Cooley & Company and Johnson Brothers and Faught.

By Mr. JUDSON:

Q. Do you think you have the subcontract—second sub-
368 contract—the one with H. H. Cooley, in your possession?

A. I rather think so.

Q. That's the one we would like to have you produce. We can agree on a copy and let the copy be retained in evidence, so that you can keep the original.

Mr. CONKLING: We can agree to that.

Mr. OLMSTED recalled.

Cross-examination resumed by Mr. CONKLING:

Q. In testifying concerning the various parts of Exhibit Number Six you stated you had made certain estimates as per vouchers for different classes of work mentioned in that exhibit, you recollect?

A. Yes, sir.

Q. That is the paper (exhibiting). Look at that so you will be certain that you know what paper it is, for I want to ask you a question or two. In making these estimates mentioned in this exhibit do they include for engineering work done south of Mount Olive?

A. I can't say.

Q. Does it include work for engineering over any part of the route between Litchfield and Springfield of the old Chicago, Springfield & St. Louis line which was not used by the St. Louis & Chicago Company?

A. I think it does.

Q. Is the same thing true in regard to the right of way as estimated by you?

A. I think probably it is.

Q. Is the same thing true in regard to the estimate for cross-ties?

A. I think not, because the cross-ties were in Litchfield.

Q. Are the cross-ties for which you estimate the sum given in this exhibit the cross-ties that were laid in Adams street, in
369 the city of Litchfield?

A. Most of them were. Then there were quantities of them piled up there.

Q. Is the same thing true as stated in the first question above asked with regard to your estimate concerning the construction account?

A. We have alluded to that already.

Q. In your right of way—cross-ties?

A. Yes, sir; probably it is.

Q. Is the same true with regard to the amount estimated also for miscellaneous?

A. Really I don't know what miscellaneous is.

Q. Isn't it true that that included all odds and ends, many of which were not for work or labor expended concerning right of way or work appropriated by the present road?

A. No reason why I should limit the work in miscellaneous.

Q. Is the same true with regard to right of way guaranteed?

A. Probably.

Q. The same with regard to right of way contracted?

A. Probably.

Q. When you have made an estimate with regard to the special value of the Litchfield right of way, was that in view of the license or permission given by the city of Litchfield to pass over?

A. That ten thousand?

Q. Yes, sir.

A. I think that entry entered very largely.

Q. You mean the license given by the city of Litchfield to pass through the city?

A. Yes, sir; I considered that the franchise was very valuable.

370 Redirect by Mr. JUDSON:

Q. You understood that this conveyance recites that it conveys, this Exhibit Number Six, only that part north of the I. & St. L. railroad?

A. Yes, sir.

Q. Did you mean to be understood that you included in your estimate property which did not lie north?

A. What I had in my mind was that it included any work that might be done on that nook that turned up towards Pawnee.

Q. Undoubtedly, but did you mean to include work which did not lie in those limits at all, but south of the I. & St. L. track?

A. No, sir.

Cross-examination by Mr. CONKLING:

Q. Then the substance of Mr. Olmsted's answer is this: On all these estimates, as per Exhibit Number Six, they were for different items situated north of the I. & St. L.?

A. To the city of Springfield.

Q. And includes items for work, and so forth, as specified in that exhibit, relating to a part of the line which runs off into Pawnee township and which has not been included in the new road?

A. Yes, sir.

Mr. JOHNSON recalled.

Direct by Mr. JUDSON:

Q. You state that you had nothing to do with building any line south of Litchfield—Litchfield & St. Louis railroad running from the city of Litchfield to Mount Olive?

A. No, sir; nothing since '83.

Q. Do you know when that was built?

371 A. No, sir; built within the last fifteen months, I should judge.

Q. That track runs in close proximity to the Wabash railway track, doesn't it?

A. Yes, sir.

Q. State whether or not you can see the track and road-bed from the Wabash cars as you go along.

A. Yes, sir; I was looking at it last evening.

Q. Been in the habit of going over the road from Litchfield south—the Wabash?

A. No, sir; not lately. First time I have passed over it since — laid that track.

Q. Can you state whether the present track of the Litchfield & St. Louis is built on the road-bed built by you in '83?

A. I wouldn't like to testify to that until I had seen it more definitely than as a man riding along a railroad after night. It would be very hard for me to say it was built on the exact bed I had built four or five years before that. If you would allow me to use a word that was used this morning I will say I presume it is.

Q. You would say it appears to be?

A. Yes, sir: it appears to be.

Q. How was the road you laid in '83 with reference to the Wabash track?

A. Looks to me it was just where the road runs now.

(Signatures of witnesses to testimony waived by agreement.)

372 An ordinance granting to the Springfield & St. Louis Railroad Company the right of way on certain streets.

Be it ordained by the city council of the city of Litchfield.

SECTION 1. That the Springfield & St. Louis Railroad Company its successors and assigns are hereby granted the right to lay its track and operate its road over and upon the following-described highway and streets in the city of Litchfield to wit: The highway or street running parallel with and adjoining on the east of the right of way of the Wabash, St. Louis & Pacific Railway Company, extending from the northwest corner of section thirty-three (33) town. nine (9) north, range five (5) west in Montgomery county, Illinois, to Bayless street between Adams street and the Wabash, St. Louis and Pacific railway and upon Adams street from Fisher street south to Edwards street, and Hamilton street its full length from north to south; and the right hereby granted shall include

all necessary cross-streets along the above-described route. Provided, said railroad company shall so lay its track as not to prevent the travel for teams along said streets; and shall make and keep in repair crossings for all streets crossing said railroad.

SEC. 2. Said railroad company its successors and assigns shall save and keep harmless the said city of Litchfield from the payment of any and all damages to private property in said city that may be caused by the building and operating said railroad within the limits of said city, and it is further provided that said railroad company shall be liable to the owners of all private property along said streets for all damages which may be caused by the building and operating said railroad as provided by the statutes of the State of Illinois.

SEC. 3. In case the said railroad is not built and in opera-
373 tion and cars running on the same through said city by the first day of January A. D. 1885, the rights herein granted shall be subject — revocation by the city council of said city.

SEC. 4. This ordinance shall take effect and be in force from and after its passage.

STATE OF ILLINOIS, }
Montgomery County, City of Litchfield, } ss:

I, Jno. W. Rose, city clerk of said city of Litchfield, in the county and State aforesaid, do hereby certify that the above and foregoing ordinance is a true copy from the records of an original ordinance of the city of Litchfield, numbered 360 and entitled "An ordinance granting to the Springfield and St. Louis Railroad Company the right of way on certain streets," which was passed by the city council of said city on December 14th, A. D. 1882.

In testimony whereof I have hereunto set my hand and affixed the seal of said city this 13th day of January, A. D. 1888.

[L. S.] JNO. W. ROSE, *City Clerk.*

Copy of Notice of Acceptance of Ordinance No. 360 by Assignee.

"To the city council of the city of Litchfield:

You are hereby notified that the Chicago, Springfield & St. Louis Railroad Company have accepted an assignment, transfer, and conveyance from the Springfield & St. Louis Railroad Company of all its rights, interest, and privilege under an ordinance entitled "An ordinance granting to the Springfield and St. Louis Railroad Com-
pany the right of way over certain streets," and you are
374 hereby notified that the said Chicago, Springfield & St. Louis Railroad Company hereby accepts all the rights and privileges conferred by said ordinance upon said Springfield & St. Louis Railroad Company and will construct its railroad over and along said streets at an early day.

(Signed) THE CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD COMPANY,
By E. SOUTHWORTH, *President.*"

I, Jno. W. Rose, city clerk of the city of Litchfield, Illinois, do hereby certify that the above notice of acceptance is a true copy of the original thereof which was filed in my office March 15th, 1883.

In testimony whereof I have hereunto set my hand and affixed the seal of the city of Litchfield January 13th, 1888.

[L. S.] JNO. W. ROSE, *Clerk.*

Copy of Ordinance 361.

An act granting to the Chicago, Springfield & St. Louis Railroad Company the right of way over and across the Litchfield reservoir property.

Be it ordained by the city council of the city of Litchfield.

SEC. 1. That the right of way is hereby granted to the Chicago Springfield & St. Louis Railroad Company and its successors and assigns over and across the land owned by said city and used and known as the Litchfield reservoir property, which right of way is limited to a strip one hundred feet wide adjoining on the east and parallel with the right of way of the Wabash, St. Louis & Pacific Railway Company to be used and occupied for the construction maintenance and operation of a railway by the said Chicago,
375 Springfield & St. Louis Railroad Company. The right herein granted includes the right of constructing and maintaining such bridge or bridges over and across the waters of said reservoir as the said Chicago, Springfield & St. Louis Railroad Company shall require, provided, said railroad company shall occupy said right of way on or before January 1st, A. D. 1884.

SEC. 2. Said railroad company shall have the right to make such excavations and embankments as it may deem necessary: Provided that no earth shall be placed within the area of said reservoir below high water.

SEC. 3. This ordinance shall take effect and be in force from and after its passage.

Passed March 15th, 1883. Approved March 16th, 1883.

Attest:

[L. S.] (Signed) R. F. BENNETT, *Mayor.*
G. W. JONES, *City Clerk.*

STATE OF ILLINOIS, }
Montgomery County, City of Litchfield, } *ss:*

I, Jno. W. Rose, city clerk of the said city of Litchfield, in the county and State aforesaid, do hereby certify that the above and foregoing ordinance is a true copy of an original ordinance of the city of Litchfield, numbered 361 and entitled "An act granting to the Chicago, Springfield & St. Louis Railroad Company the *ri* right of way over and across the Litchfield reservoir property," which is now on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said city this January 13th, 1888.

JNO. W. ROSE, *City Clerk.*

376 An ordinance extending the effects of ord. No. 360.

Be it ordained by the city council of the city of Litchfield.

SEC. 1. That all the rights, powers and privileges conferred on the railroad company its successors and assigns therein named by ordinance 360 are hereby extended and continued as amended until the expiration of ten months from the date of the passage of this ordinance.

SEC. 2. In case said railroad is not constructed and in operation with cars running thereon from Springfield to Litchfield, Illinois, within said ten months then in that case, all rights powers and privileges conferred by said ordinance No. 360 and extended by this ordinance shall cease and determine and said ordinance number 360, be revoked and all ties, rails and other property of said railroad company on said street shall *be* forthwith be removed without notice to said railroad company, its successors and assigns.

SEC. 3. That section one of ordinance No. 360 be amended so as to read as follows:

SECTION 1. That the Springfield & St. Louis Railroad Company its successors and assigns are hereby granted the right to lay its track and operate its road over and upon Adams street in said city from the north line of Bayless street to and across Edwards street and over and along Hamilton street the full length from north to south; and the rights herein granted shall include all necessary cross-streets along the above-described route; provided, said railroad company its successors and assigns shall so construct and lay its track that the same shall be level with the street and so as to interfere as little as possible with the ordinary travel and use of said street, and shall construct and keep in repair at each intersecting street, crossings of the width and character now provided by ordinance of the said city of Litchfield.

377 SEC. 4. The future construction and operation of said railroad by said railroad company its succes-ors and assigns, shall be taken and deemed as an acceptance by said company of whatever changes and alterations made by this ordinance in the contract or agreement existing between the city and said railroad company its successors and assigns under and by virtue of ordinance No. 360.

Passed and approved March 7th, 1885.

JOHN LANGE, *Mayor.*

Attest:

[L. S.] JNO. W. ROSE, *City Clerk.*

STATE OF ILLINOIS, } ss:
Montgomery County, City of Litchfield, }

I, Jno. W. Rose, city clerk of the said city of Litchfield, do hereby certify that the above and foregoing ordinance is a true copy of an original ordinance of the city of Litchfield numbered 436 and entitled "An ordinance extending the effects of ordinance No. 360," which is now on file in my office.

In testimony whereof I have hereunto set my hand and the seal of said city of Litchfield this January 13th, 1888.

JNO. W. ROSE, *City Clerk.*

UNITED STATES OF AMERICA,
Southern District of Illinois.

In the Circuit Court of the United States for the Southern District of Illinois.

378 BELLE N. B. WADE *et al.*
vs.
CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD COMPANY *et al.*

To said defendants and Messrs. Conkling & Grout, their solicitors:

You are hereby notified to produce before Volney Hickox, examiner appointed in the above-entitled cause, at hearing before said examiner on Wednesday, Feb. 22nd, 1888, in city of Springfield, Ill.:

First. All contracts for rights of way made to or for the Chicago, Springfield & St. Louis Railroad Company or to the Empire Construction Company, being the contracts and deeds referred to in the certain deed by the Empire Construction Company to H. H. Cooley & Company, certified copies whereof were heretofore offered as evidence in this cause.

Second. The surveys and maps of the Chicago, Springfield & St. Louis Railroad Company, which said surveys and maps were in the possession of the Empire Construction Company and are referred to in the deeds of the Empire Construction Company as aforesaid.

Third. All the papers, deeds, and documents of every kind referred to and set forth in the certain notice served upon you prior to the taking of testimony in this cause before L. L. Walbridge, special examiner, at Litchfield, Illinois, and which you then failed to produce in accordance with said notice.

HOUGH, OVERALL & JUDSON,
Att'ys for P'ffs.

Dated Feb. 20th, 1888.

CONKLING & GROUT.

379 THE UNITED STATES OF AMERICA, *ss:*

Circuit Court of the United States of America, Southern District of Illinois.

To the marshal of the southern district of Illinois, Greeting:

We command you to summon Benjamin F. Johnston, if found in your district, to be and appear before Volney Hickox, special master of the United States for the southern district of Illinois, on 22 day of February, A. D. 1888, in Springfield, in the district aforesaid, then and there to testify on behalf of the complainants in a certain cause in said court depending, wherein Belle N. B. Wade *et al.* are complainants and The Chicago, Springfield & St. Louis Railroad Company *et al.* are defendants, and this in nowise to omit, under the

penalty of the law in that case made and provided; and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, the 17th day of February, in the year of our Lord one thousand and eight hundred and eighty-eight, and of our Independence the one hundred and twelfth year.

[L. S.] JAMES A. JONES, *Clerk.*

(Endorsed:) Filed March 1st, 1888. James A. Jones, clerk.

380 D. L. WING sworn.

Direct by Mr. C. L. CONKLING:

Q. State your name, age, residence, and occupation.

A. My name is D. L. Wing; my age is thirty-nine; my residence is Springfield, Illinois.

Q. Where were you living in 1882?

A. St. Louis.

Q. Where have you lived from that time to this—in a general way?

A. Continued to reside in St. Louis until the latter part of '84 or '85. I think the first of '85; resided in Charleston, Illinois, until early in the following year, since which time I have resided in Springfield.

Q. Were you acquainted with R. B. Wade?

A. I was.

Q. During what years?

A. From the latter part of '81 till he died.

Q. Recollect about the date of his death?

A. I don't exactly.

Q. Did you have any business transactions with R. B. Wade in his lifetime?

A. I did.

Q. If so, what was the nature of those transactions?

A. In relation to a loan of thirty-five thousand dollars.

Q. When did those transactions occur?

Objection.—Complainants object to the testimony as irrelevant to the issues in this case.

Q. State when they occurred.

381 A. Can't fix the exact date, but an agreement was made at the time by which I could fix the date.

Q. Have you anything now in your possession or in your hands that would refresh your recollection as to that date?

A. I haven't anything here at the moment. I think at my office in some papers I have either a copy or the original agreement.

Q. What do you call that agreement? What was that agreement and the nature of it?

A. In a general way it was to discount a note or acceptance of

thirty-five thousand dollars in which he had an option to purchase an interest in consideration of company property.

Objection.—Same objection.

Q. It is stipulated and agreed that a certain collateral agreement entered into between D. L. Wing and R. B. Wade concerning a loan of thirty-five thousand dollars may be here inserted or a copy thereof as a part of this testimony, subject to all objections on the part of the complainant except as to its being a copy, in case a copy is produced.

(Said agreement or copy to be marked Defendants' Exhibit "A.")

Q. With reference to that loan of thirty-five thousand dollars, from whom was it made?

A. From R. B. Wade.

Q. Did you receive the money on that loan?

382 A. I did.

Q. Did you deposit any collateral with him?

A. I did.

Q. Did you or not deposit with him as collateral under that agreement any railroad bonds; and, if so, what?

A. I deposited fifty thousand dollars in face value of Chicago, Springfield & St. Louis Railroad Company bonds.

Q. Do you recollect what numbers?

A. My recollection is they were numbered from one to fifty or forty-nine, inclusive.

Q. Are they or not the same bonds in controversy in this suit?

A. I presume so. That is my understanding.

Q. Did you sell those bonds to any one?

A. No, sir.

Q. When, if you know, were those bonds delivered to Mr. R. B. Wade?

A. At the time the agreement was executed and the note discounted (Nov. 5th, '83).

Q. This was probably in November, '83?

A. Yes, sir.

Q. At the time you deposited those bonds with him as collateral what position, if any, did you occupy in relation to the Chicago, Springfield & St. Louis Railroad Company or what position in relation to any of its business?

A. I had a contract for constructing a railroad under that charter.

383 Q. When you say you had a contract what do you mean by you—that is, D. L. Wing had a contract to construct?

A. I was president of the Empire Construction Company, who had the contract.

Q. In November, '83, how far had the construction of the Chicago, Springfield & St. Louis Railroad Company progressed?

A. There had been near two miles of track laid.

Q. Where?

A. In the city of Litchfield.

Q. Along what street?

A. Along Adams street.
Q. Which way in reference to the I. & St. L. railroad?
A. North fro- the I. & St. L. railroad.
Q. A continuous line of track to that extent?
A. No, sir; I think about one mile in that section.
Q. What was the general character of any other work done by that construction company for that railroad company at that time?
A. There had been considerable grading on the north.
Q. North of Litchfield?
A. North of Litchfield.
Q. Had any track had been laid?
A. No track north of Litchfield excepting that heretofore stated. I mean north of the I. & St. L.

384 Q. At the time that you made this contract with R. B. Wade or loan on which these bonds were deposited as collateral had you any conversation with him concerning the condition of the Chicago, Springfield & St. Louis railroad as to the extent to which it had been constructed?

Objection as irrelevant, and also on the ground that Wade is deceased.

A. Yes, sir; I had a conversation.
Q. Was or was not that conversation at the time when this collateral was deposited?
A. Yes; a day or two prior to that.
Q. What was the substance of that conversation or what was the conversation?

Objection.—Same objection.

A. The construction company had a contract from East St. Louis to Springfield. There had been about two miles of track down, for which these bonds had been issued. There was in the neighborhood of twenty-five or thirty miles of grading which had been done and contracts for right of way had been entered into.
Q. Where did this conversation take place?
A. In Mr. Wade's house.
Q. Did you have any further conversation with him after that period concerning these bonds?
A. I don't remember of any.
Q. Do you know when Mr. Wade died?
A. My impression is about January, '84, fixing it from the date of that contract.

385 Q. Did you have, after the death of R. B. Wade, any communication with or conversation with any person representing himself to own these bonds?
A. I don't remember of any.
Q. Did you ever have any conversation with Belle N. B. Wade or Warner M. Hopkins concerning these bonds?
A. Don't remember any.
Q. Did you ever have any conversation with anybody represent-

ing himself to be a representative of Belle N. B. Wade and Warner M. Hopkins concerning these bonds?

A. Had interviews with Mr. Judson, their attorney.

Q. Mr. F. N. Judson?

A. Mr. F. M. Judson.

Q. Whose attorney was he, do you say, or do you know?

A. Representing Belle N. B. Wade and Mr. Hopkins, I think.

Q. Do you know in what relation Mr. F. M. Judson stood to the estate of R. B. Wade?

A. I understood he was counsel for the estate.

Q. Do you know what relation he bore at the time of these communications to Belle N. B. Wade and Warner M. Hopkins, executors and trustees of that estate—testamentary trustees?

A. Considered him their attorney. He so represented.

Q. Will you state what the substance of your interviews with him was, stating as well as you can how it was, whether by correspondence or personal interviews; and, if the latter, where?

A. Mostly correspondence.

386 Q. Did you have any personal interviews?

A. I had one.

Q. Where?

A. The principal personal interview I had was at the Palace hotel.

Q. In what city?

A. Springfield, Illinois.

Q. About what day?

A. I might fix the date by a letter or telegram.

Q. (Exhibiting a paper.) Shall I refresh your memory?

A. It would be about November twenty-second, '86.

Q. What was the subject-matter of that interview; what was it about?

A. Referred to the settlement of a balance due on my individual note given to R. B. Wade for thirty-five thousand dollars, amount of dividend from the estate of Mr. Downing having been all paid or I was so informed. He was desirous of getting a settlement of the balance of the note—amount due.

Q. Now in that conference what, if anything, was said about any collaterals?

A. He said they were not particular-y anxious for the money, but if I would take up the collaterals that were with him there, giving something that would be considered gilt-edged, that they could realize on beyond any question at some future time——

387 Q. What mention was made of the collateral he had at that time?

A. Well, he mentioned the bonds and the notes.

Q. Do you mean these bonds in controversy?

A. Bonds—fifty—Chicago, Springfield & St. Louis bonds.

Q. Sued upon in this case?

A. Yes, sir; sued upon in this case. I believe I asked him what was left.

Q. Well, never mind. After you deposited those bonds with R. B. Wade did they ever again come into your possession?

A. No, sir.

Q. Do you know what became of them?

A. I was notified by Mr. Judson that they had been sold.

Q. For account of whom?

A. For my account.

Q. And by whom?

A. I think by his instructions as attorney for the estate of Mr. Wade; sold on Merchants' exchange, at St. Louis.

Q. Have you any report to this effect?

A. I think I have. Here is the report.

Q. Let me see that, please (taking paper and exhibiting). Please examine these three letters, dated December first, sixth, and fifteenth, 1886, respectively, and purporting to be addressed to you from Frederick N. Judson and state whether you recognize those letters.

A. I do.

Q. By whom are they signed?

388 A. Letter December first, '86, is signed F. M. Judson; December sixth, '86, Frederick M. Judson; December fifteenth, '86, F. M. Judson.

Q. Are those signed in the handwriting of Mr. Frederick M. Judson?

A. I think they are, sir.

Q. I suppose it is admitted that those are your letters?

Mr. JUDSON: Yes, sir. Let me see them.

Q. It is admitted that those are signed by Mr. Frederick M. Judson.

Mr. JUDSON: These are offered in evidence.

Q. Yes, sir; they are offered in evidence?

Objection as irrelevant.

Q. The foregoing letters offered in evidence are marked Defendants' Exhibits B, C & D.

Objection by complainants on the ground of irrelevancy.

Mr. JUDSON: It is admitted by complainant that credit was given to Mr. Wing for the proceeds of sales of these bonds, to wit, twenty thousand dollars, on a judgment which he had confessed in St. Louis circuit court for his indebtedness to R. B. Wade, and suit was thereafter brought on that judgment, and thus credited in the United States circuit court for the southern district of Illinois, and judgment thereafter rendered thereon for the sum of —, being the balance left after deducting such credit, which judgment was thereafter satisfied, and the remainder of the collateral set out in said collateral agreement were on payment of said judgment in the

389 United States circuit court surrendered to D. L. Wing, and it is admitted that they were received by him.

Complainant makes the above admission to save taking the proof, but without admitting the relevancy of any such matters to the issues in this cause.

Q. Do you recollect the mile or two miles of track laid on Adams

street, in the city of Litchfield, and north of the I. & St. L. railroad by the Empire Construction Company for the Chicago, Springfield & St. Louis Railroad Company?

A. I recollect the track laid on Adams street north of the I. & St. L.

Q. Was that graded and ironed?

A. Yes, sir.

Q. In what year, about?

A. In '83.

Q. Graded, tied, & ironed?

A. Yes, sir.

Q. What subsequently became of the grade and the ties and the iron and other material forming that track?

Objection as irrelevant.

A. It was taken up on Sunday by Henry H. Beach, John McLane, and a force of men.

Q. For whom did they take that up, if you know?

A. Took it up for themselves, as I learned.

Q. Do you know what became of that material and stuff that was taken up?

390 A. Part of it was sold to the Jacksonville & Southeastern Railroad Company, as I learned—Indianapolis & St. Louis railroad.

Q. I don't care about full details—simply whether it was disposed.

A. It was disposed of.

Q. In what condition was the street left after they tore up that track?

A. The street was afterwards leveled down to grade by the city—to the regular street grade.

Q. Is there a railroad track now upon that street?

A. There is.

Q. Covering substantially the same ground as the track you have already referred to?

A. Yes, sir.

Q. Does any part of the original grading on that street, done for the Chicago, Springfield & St. Louis Railroad Company by the Empire Construction Company, or do any of the ties or iron or other material furnished for said company now enter into the construction of the track that is upon the road or was upon the commencement of this suit?

A. No, sir.

Q. Who is the owner of the track now upon that street?

A. The St. Louis & Chicago Railway Company.

Q. Commencing on the south side of the I. & St. L. railway, was there ever any work done for the Chicago, Springfield & St. Louis

391 Railway Company, either by that company or by any one for it, on the track commencing immediately south of the I. & St. L. right of way and extending down to a point opposite what is known as the Big mill? And, if not, just state.

A. No, sir; none.

Q. About how far is it from the south line of the I. & St. L. right of way to the south side of the Big mill?

A. Half the five-eighths of a mile, I should think.

Q. Is there a railroad in operation from the south side of the I. & St. L. railroad track in Litchfield?

A. Yes, sir.

Q. What road is now running that?

A. The St. Louis & Chicago Railroad Company.

Q. What railroad company built that road originally?

A. The Litchfield & St. Louis Railroad Company.

Q. The track of that company as now laid—does it run upon any public street at the point of its commencement south of the I. & St. L. right of way?

A. No, sir; not at the point of its commencement.

Q. What is it there, lots or public ground?

A. Well, it was lots.

Q. Did the Chicago, Springfield & St. Louis Railway Company ever at any time have any contract for or deed for or any arrangement for any right of way over that lot of land?

A. No, sir.

392 Q. Do you know who owns the right of way or who obtained the right of way originally over that land?

A. Do you mean Springfield & St. Louis Railroad Company?

Q. The one that built.

A. Property was condemned.

Q. Springfield & St. Louis?

A. Yes, sir.

Q. Was the Springfield & St. Louis railroad actually built?

Mr. JUDSON: What Springfield & St. Louis?

A. I mean the Litchfield & St. Louis.

Q. What comes next to this lot of ground—public ground or private property—south?

A. Comes to a street.

Q. Does the track run over that street?

A. Yes, sir.

Q. How far down?

A. Half a mile.

Q. What is the name of that street?

A. I think it is Hamilton street.

Q. Over whose ground did this present track run after leaving Hamilton street?

Mr. JUDSON: Across or running on Hamilton street?

A. I think it runs on Hamilton street a half a mile. Hamilton street may be a cross-street, *by* my impression is Hamilton street runs north and south.

Q. Does it run on a street running north and south?

A. Yes, sir.

Q. What distance?

A. About half a mile.

393 Q. Next after leaving Hamilton street over what track does the road run?

A. Runs over property I formerly owned individually.

Q. Did the Chicago, Springfield & St. Louis Railroad Company ever have any contract, agreement, or deed for this last-mentioned tract?

A. No, sir.

Q. Do you recollect the description of this last-mentioned tract?

A. It was a strip sixty-six feet wide.

Q. Recollect the section or part of the section?

A. No, sir; I couldn't tell it.

Q. Do you know what is called the Mock tract?

A. Yes, sir.

Q. Does this strip sixty-six feet wide that you refer to adjoin the Mock track?

A. Yes, sir.

Q. On which side?

A. The east side.

Q. Do you know what tract came next south of this strip of sixty-six feet?

A. Formerly the Smith property—property which I purchased individually.

Q. When did you purchase that?

A. In the spring of '83.

Mr. JUDSON: Smith property purchased individually?

A. Smith & Mock property both.

Q. With whose money did you pay for those two tracts?

394 A. My own individual money.

Q. Did the Chicago, Springfield & St. Louis Railroad Company or any one for it have any contract or agreement or deed for either the Mock or Smith tracts, being the same upon which the present railroad track is located?

A. Not to my knowledge.

Cross-examination by Mr. F. M. JUDSON:

Q. Mr. Wing, were you a party to the organization of the Chicago, Springfield & St. Louis railroad?

A. I think not.

Q. I mean you were not one of the incorporators?

A. No, sir.

Q. Did you have any part in fitting up the scheme of the organization of that road?

A. No, sir; don't remember of any.

Q. Did you have any connection with the prior organization, which was never carried out; of what was called the Springfield & St. Louis railroad?

A. I think I was elected president of that road without my knowledge. I never attended a meeting in that capacity.

Q. What was your connection with the Empire Construction Company?

A. I was president.

Q. Who else was connected with that company besides yourself?

395 A. C. H. Wing was the secretary; no other.

Q. Were there any other stockholders in that company?

A. One other.

Q. Who was the other stockholder?

A. H. F. Downing. Possibly some one else had one share. I am not certain now.

Q. By whom was the work of construction done? What work was done on the Chicago, Springfield and St. Louis—that is, by whom under the Empire Construction Company?

A. By Johnson Brothers & Faught.

Q. You spoke of certificates being issued to the effect that two miles of road had been completed. Who issued those certificates?

A. J. H. Wilson, the engineer.

Q. By whom were those certificates sent to New York to the Central Trust Company?

A. I think I sent them.

Q. To whom did the Central Trust Company deliver the stock and bonds?

A. To me.

Q. In what capacity did you receive them?

A. As president of the Empire Construction Company.

Q. Did you place on record a mortgage securing these bonds executed by the Chicago, Springfield & St. Louis Railroad Company?

A. No, sir; I don't think I did.

Q. Did you deposit that mortgage with the Central Trust Company?

396 A. Not to my knowledge.

Q. When was the work of construction of the Chicago, Springfield & St. Louis first commenced?

A. About April, '83, I think.

Q. When was it discontinued?

A. I should say July or August, the same year.

Q. What was done with the thirty-five thousand dollars which you received from R. B. Wade—these bonds mentioned on direct examination?

Objection.—Irrelevant.

A. Passed to the credit of the Wing Milling Company.

Q. Had the Wing Milling Company theretofore advanced any money for the Empire Construction Company?

Objection.—Irrelevant.

A. No, sir.

Q. Had you yourself advanced any money?

A. Yes, sir.

Q. Did you or not represent to R. B. Wade that the money obtained by you on these bonds was for the purpose of paying for the

construction—on account of the construction of this road or was to be applied on account of such construction?

Objection.—Irrelevant.

A. No, sir.

Q. You are certain you made no such statement in the agreement you signed with him?

A. Don't remember.

397 Q. What did the Wing Milling Company do with the money you say they received on these bonds?

Objection.—Irrelevant.

A. Used it in their business.

Q. Are you acquainted with Mr. Johnson, of Johnson Brothers & Faught?

A. Yes, sir.

Q. What, if any, part had you in the organization of the St. Louis & Chicago Railroad Company?

A. I was one of the incorporators of that company.

Q. What, if any, part had you in the organization of the Litchfield & St. Louis Railroad Company?

A. I was not one of the incorporators of that.

Q. You say you were not one?

A. No, sir.

Q. Had you any part in the organization of that company?

A. No, sir; I don't think so.

Q. Didn't appear as one of the incorporators?

A. No, sir; I don't think I was.

Q. In your conversation with R. B. Wade did you inform him that work in the construction of the road had been permanently abandoned—I mean the road of the Chicago, Springfield & St. Louis?

A. Don't remember of any conversation in that direction.

Q. Was it or not understood between you and himself that the construction of that road was abandoned and that the money that he paid you was to be applied to the purposes of the Wing Milling Company?

398 Objection.—Irrelevant.

A. He understood the money was to be applied to the use of the Wing Milling Company.

Q. What, if any, connection had you with the firm of Cooley & Company?

A. No connection with it.

Q. Of whom was the firm of Cooley & Company composed?

A. H. H. Cooley & C. H. Wing.

Q. Had you any interest, direct or indirect, in the interest of C. H. Wing in that contract?

A. No, sir.

Q. What, if any, relation was H. H. Cooley to yourself?

A. He was a brother-in-law.

Q. Had you any interest, direct or indirect, in the interest of H. H. Cooley in that firm?

A. No, sir.

Q. Do you remember a certain conveyance by the Empire Construction Company to H. H. Cooley & Company?

A. Yes, sir.

Q. And by H. H. Cooley & Company to the St. Louis & Chicago Railway Company?

Objection.

A. Yes, sir.

Q. Did you have any part in the preparation of those instruments?

A. Don't think I did.

Q. Were they made under your direction?

399 A. I think Judge Phillips drew all those papers.

Q. By whom was Judge Phillips employed?

A. I think H. H. Beach. I think H. H. Beach and John McLane employ-d him.

Q. For the Empire Construction Company?

A. No; for the St. Louis & Chicago Railway Company, I think.

Q. What connection had they with the St. Louis & Chicago Railway Company at that time?

A. McLane was secretary of the company.

Q. You executed the conveyance of the Empire Construction Company, did you not?

A. Yes, sir.

Q. You at that time were connected with the railroad company, were you not?

A. I think I was president of the railway company.

Q. This first conveyance was dated the twenty-sixth of May, 1885. Had you at this time made any contract or negotiation with F. C. Hollins, of New York?

Objection.—Not proper cross-examination.

A. At that date I think not.

Q. When did you first make any agreement or contract or enter into any negotiation with Mr. Hollins with reference to the construction of this road or the negotiation of any of its securities?

Objection.—The same.

A. It was some time during '85; not positive what date.

Q. Do you remember in this conveyance executed by you

400 on May twenty-sixth, '85, a schedule of property acquired by the Empire Construction Company for the Chicago, St. Louis & Springfield Railroad Company?

A. Don't remember it; no, sir; it would show, but I don't remember it.

Q. Please state just what this property is which you say was conveyed by you individually—purchased by you individually—over

which the track of the road ran. Was it in the corporate limits of Litchfield?

A. I think it was; I am not sure.

Q. What was its relation or position with respect to the property of the Litchfield reservoir; what is known as that property?

A. We call it north from there; northwest.

Q. Of whom was this property purchased?

A. Purchased of Mock, and another piece of land of Smith, if I recollect right.

Q. Did you buy the right of way or the property itself?

A. In the Mock property my impression is there was sixteen acres. In the Smith property there was three or four acres; that is my impression.

Q. Did you buy the right of way over it or the property itself?

A. Bought the property as a whole.

Q. Fee simple of the property?

A. Bought the property as a whole.

401 Q. Through whom did you effect the purchase?

A. A Mr. Wilson.

Q. The engineer of the railroad?

A. Yes, sir.

Q. Did you take a deed to the property in your individual name?

A. Yes, sir.

Q. At that time?

A. Yes, sir; at that time.

Q. As I understand you, that is property between the mill and the reservoir property?

A. Yes, sir.

Q. Was any work done upon this property purchased by you of the old company?

A. Yes, sir.

Q. How much work was done on that property?

A. It was grated through it.

Q. Was any bridging done upon it?

A. Yes, sir; bridging on the south.

Q. Any ties laid on the property?

A. No, sir.

Q. Was it graded continuously over the whole of this property purchased by you?

A. Yes, sir.

Q. Who did that grading?

A. Johnson and Brothers.

Q. What was the purchase price paid by you for these tracts of property?

402 A. I think fifteen hundred to Mock and either three or five hundred to Smith; not positive as to the latter.

Q. Were these parties who conveyed to you aware of the intention to build a railroad over that property?

A. Well, I couldn't tell you.

Q. Have you ever made a conveyance to the Litchfield & St. Louis Railroad Company of the right of way over that property?

A. Except through the Empire Construction Company.

Q. Did you ever make a deed to the Empire Construction Company of this property?

A. No, sir.

Q. What you mean is this, that you have made no conveyance to the Litchfield & St. Louis except so far as it might have been conveyed by this conveyance to the Construction Company and by Cooley & Company to the Litchfield & St. Louis Railroad Company?

A. Yes, sir.

Q. How much track has been built, Mr. Wing, by the Litchfield & St. Louis from the I. & St. L. south, in miles?

A. The track from the I. & St. L. south, I think, is about ten miles.

Q. What is the southern terminus?

A. Well, it is at the coal shaft, south.

Q. At what point—geographical point?

A. One mile north of Mt. Olive Station.

403 Q. What is the actual distance between Litchfield and Springfield on the St. Louis & Chicago?

Objection.—Irrelevant and not cross-examination.

A. My recollection is, forty-five miles.

Q. Did you make any use of this schedule of property conveyed by the Empire Construction Company, through Cooley & Company, to the Litchfield & St. Louis Railroad Company in any statement or circular or otherwise?

Objection.—Same objection.

A. I don't remember of any.

Q. In connection with the negotiation of the securities of these bonds?

A. I don't remember of any.

Q. Did you ever furnish F. C. Hollins & Co., of New York, with a statement of a schedule of property contained in either of these conveyances?

Objection.—Same objection.

A. Don't remember that I furnished them a statement of that kind.

Q. Any time?

A. No; don't remember.

Q. Was or was not that statement prepared under your direction?

Objection.—Same objection.

A. No, sir; it was not.

Redirect by Mr. CONKLING:

404 Q. You have been asked whether grading was done on the Mock and Smith tracts under the contracts held by Johnson

Brothers & Faught under the Empire Construction Company and you have said that it was graded all the way across under those contracts; did the Chicago, Springfield & St. Louis Company ever accept that grading?

A. No, sir.

Q. Did the Chicago, Springfield & St. Louis Railroad Company ever pay for that grading?

A. No, sir.

Q. Were Johnson Brothers & Faught paid for it?

A. Yes, sir.

Q. Was the Empire Construction Company paid for it by the Chicago, Springfield & St. Louis Railroad Company?

A. No, sir.

Cross-examination by Mr. JUDSON:

Q. I would like, Mr. Wing, to identify this book, which you will recollect (exhibiting).

A. What do you want me to say about it?

Q. Well, say simply, which I presume you will remember, that you handed a copy of that to Captain Wade in his lifetime.

A. I never gave it to him.

Q. If you did I want you to say so.

A. I can tell you who did if you want to know.

Q. I will just ask Mr. Wing to identify this printed copy
405 or prospectus issued by the Chicago, Springfield & St. Louis Railroad Company in May, '83.

A. That was gotten up by Noble.

Q. You admit that was issued in '83?

A. I know that Noble had a document of that kind; I think I had one copy of it. There was one prospectus issued abroad by a gentleman by the name of Ames.

Q. All I want you to do is to identify this as a copy of the prospectus prepared by Mr. Noble as attorney for the railroad company.

A. He was attorney of the railroad company, not my attorney.

Q. In May, '83?

A. Whatever the date is there.

Redirect by Mr. CONKLING:

Q. Were you the author or inspiration of that?

A. No, sir.

Q. Done by your authority or for you?

A. No, sir; not at all.

Q. I don't know what it is, but was Mr. Noble acting for you in any respect in composing, issuing, or publishing it?

A. No, sir; not to my knowledge.

Q. Are you in any way responsible for that or its statements?

A. No, sir; I don't consider myself responsible for anything regarding that book.

406 Received the within-mentioned collateral except deed of trust on land in Kansas.

ROBERT B. WADE.

St. Louis, Nov. 5, '83.

Whereas D. L. Wing is the owner of two hundred and fifty shares, being all of the capital stock of the Empire Construction Company; and whereas the full amount ($25,000) is fully paid; and whereas said Wing has advanced to said construction company the sum of eighty thousand dollars (80,000) to enable it to pay for work done in the construction of the Chicago, Springfield and St. Louis railroad; and whereas said construction company is unable at this time to reimburse said Wing for his said advances, making it necessary that he should obtain a loan of thirty-five thousand dollars ($35,000) for four or six months; and whereas, to aid said Wing in the premises, R. B. Wade has this day agreed and contracted with said Wing as follows:

1st. Said R. B. Wade hereby agrees to endorse the note of said Wing, dated November 5th, 1883, to order of said Wade, for the sum of thirty-five thousand dollars ($35,000), payable four months after date, payable at the Bank of Commerce, St. Louis, which note said Wade will cause to be discounted by said bank and proceeds thereof paid to said Wing upon delivery to said Wade of the following collaterals to secure payment thereof, and to hold said Wade harmless on account of said endorsement:

407 1st. Fifty first-mortgage bonds of said Chicago, Springfield & St. Louis Railroad Company, each of the par value of one thousand dollars.

2nd. Two hundred and fifty shares of the capital stock of the Empire Construction Company, each of the par value of one hundred dollars.

3rd. Draft of Wing Milling Company on H. F. Downing, Springfield, Massachusetts, dated November 5th, 1883, payable six months after date, to order of said milling company, and accepted by said Downing, payable at 406 Chamber of Commerce, St. Louis, Missouri, for the sum of thirty-five thousand dollars, and duly endorsed by said Wing Milling Company and D. L. Wing.

4th. Two demand notes of Jonathan Mills in favor of D. L. Wing, each for the sum of five hundred dollars, dated respectively March 7th, 1882, and January 31st, 1882, and each endorsed by D. L. Wing.

5th. Demand note of William R. Frary, dated August 20th, 1883, for five thousand dollars, in favor of D. L. Wing, bearing interest at eight (8) per cent., payable on the first days of January and July, secured by fifty shares Wing Milling Company stock, a certificate for which stock, duly endorsed, is attached to said note.

6th. One share of stock of St. Louis natatorium of the par value of one hundred dollars, duly endorsed by said Wing.

7th. One share of stock of the St. Louis Agricultural and Mechanical Association of the par value of one hundred dollars, duly indorsed by said Wing.

408 8th. Five shares of stock of the City National Bank of Springfield, Massachusetts, each of the par value of one hundred dollars, duly endorsed by said Wing.

9th. Seven shares of stock of the National Needle Company, duly endorsed by said Wing.

10th. Two shares of stock of the Springfield Gas Machine Company of Massachusetts, duly endorsed by said Wing.

11th. A deed of trust on six hundred and forty acres of land, situated in Ottawa county, State of Kansas, and described as follows:

If hereafter required by said Wade.

Said note of thirty-five thousand dollars ($35,000), when due, may be renewed on same terms, at option of said Wing, for an additional two months, upon notice in writing delivered to said Wade fifteen days next before its maturity. In consideration of said loan and the services and assistance of the said Wade rendered to said Wing in procuring said loan upon the terms aforesaid said Wing hereby gives and grants to said Wade the option to purchase on or before maturity of said note of thirty-five thousand dollars ($35,000) an interest in the said capital stock of said Empire Construction Company equal to amount represented by said —, based on the sum of one hundred and five thousand dollars ($105,000) invested in
409 said stock of the construction company and advanced by said Wing to and for it, with all the rights and interests now held by said Wing as stockholder therein, and to carry such proportion of the obligations and indebtedness of said company as said thirty-five thousand dollars ($35,000) may bear to the whole amount advanced as aforesaid by said Wing to said construction company—that is to say, on or before maturity of said note of thirty-five thousand dollars ($35,000) or the renewal thereof, as above stipulated, said Wade, at his option, may treat said loan as a payment by him to said Wing and receive for such payment a *pro rata* interest of said stock of said construction company, based on a gross sum of one hundred and five thousand dollars ($105,000), now invested by said Wing in said stock and advanced to and for said construction company by him. In such case the amount of stock to be received by said Wade will be $\frac{35}{105}$ of said two hundred and fifty shares, and he will obtain an assignment from said Wing of $\frac{35}{105}$ of his claim against said construction company for eighty thousand dollars ($80,000) now advanced to and being carried by said Wing for said construction company. When said option is exercised in the manner aforesaid and said Wade receives the said
410 proportion of said stock and the assignment of $\frac{35}{105}$ of said claim of $80,000, the said note or any renewal thereof shall be surrendered to said Wing. If said Wade decline to exercise the said option, then said Wing shall pay the said note or the renewal thereof under the terms of this agreement at maturity; and the said D. L. Wing does hereby give to George C. Thomas full power and authority to sell as his attorney — by all necessary acts to transfer said collateral securities or any part or portion thereof at the Merchants' exchange in the city of St. Louis or at public sale or at private sale, at the option of the said Wade, on the failure of said Wing to pay or cause to be paid said note of thirty-five thousand dollars or the renewal thereof as above stipulated at maturity or at any time thereafter and without advertising the same or otherwise giving to said Wing any notice; and said Wing does hereby confer upon the said Wade full power at any such sale to bid and

purchase as any other person; and the said Wing does hereby agree to make good any deficit should the net proceeds of said sale not be sufficient to pay said note of thirty-five thousand dollars (35,000).

Any surplus over and above the amount due on said note of
411 thirty-five thousand dollars shall be paid to said Wing.

In testimony whereof the said R. B. Wade and D. L. Wing have hereunto set their hands and seals this fifth day of November, 1883.

In duplicate.

ROBERT B. WADE. [SEAL.]
D. L. WING. [SEAL.]

Attest: JNO. C. ORRICK.

ST. LOUIS, *Feb'y 28th*, 1885.

Inasmuch as George C. Thomas, the party named in the foregoing agreement as my attorney to transfer the several collateral securities therein described, has removed from city of St. Louis and State of Missouri and become a non-resident, I do hereby apppoint in place of said Thomas, who has declined to act by reason of such non-residence, Frederick N. Judson as my attorney in place of said Thomas, with full power to irrevocably transfer said collaterals in my name and to said extent and with all powers conferred upon said Thomas by foregoing agreement.

Witness my hand and seal this 28th day of February, 1885.

(Signed) D. L. WING. [SEAL.]

412 DEF'TS' EXHIBIT B.

Law offices of Hough, Overall & Judson, 2d floor Third National Bank building, 417 Olive street, St. Louis.

DECEMBER 1ST, 1886.

D. L. Wing, Esq., Springfield, Ill.

DEAR SIR: As authorized by your contract with R. B. Wade of date November 5th, 1883, and February 28th, 1885, I shall sell the several collateral securities described in the said contract, at public sale, on the Merchants' exchange, in city of St. Louis, on Wednesday, December 15th, 1886.

Respectfully, FREDERICK N. JUDSON.

413 DEF'TS' EX. C.

Law offices of Hough, Overall & Judson, 2d floor Third National Bank building, 417 Olive street, St. Louis.

DECEMBER 15TH, 1886.

D. L. Wing, Esq., Springfield, Ill.

DEAR SIR: As authorized by your contract with R. B. Wade of date November 5th, 1883, and February 28th, 1885, and under instructions of Belle N. B. Wade and Warner M. Hopkins, trustees under will of R. B. Wade and of said Belle N. B. Wade in her own

right, devisees of said R. B. Wade, and as per my notice to you of Dec. 6th, I to-day sold on the Merchants' exchange, in city of St. Louis, at public sale, the fifty bonds of Chicago, Springfield & St. Louis Railroad Company described in said contract to Belle N. B. Wade and Warner M. Hopkins, trustees under the will of R. B. Wade, for sum of twenty thousand dollars.

Respectfully, F. N. JUDSON.

414 & 415 DEF'TS' EX. D.

Law offices of Hough, Overall & Judson, 2d floor Third National Bank building, 417 Olive street.

ST. LOUIS, *December 6th*, 1886.

D. L. Wing, Esq., Springfield, Ill.

DEAR SIR: As authorized by your contract with R. B. Wade of date November 5th, 1883, and February 28th, 1885, and under instructions of Belle N. B. Wade and Warner M. Hopkins, trustees under will of R. B. Wade and of said Belle N. B. Wade, in her own right, devisees of said R. B. Wade, I shall sell the several collateral securities described in said contract at public sale on the Merchants' exchange, in the city of St. Louis, at one o'clock p. m., on Wednesday, December 15th, 1886.

Advertisement of sale will be made on Saturday next, December 11th, in Missouri Republican, unless before that time you pay the balance due on the debt for which said collaterals are held in pledge or make arrangements concerning same satisfactory to the parties in interest.

Respectfully, FRED'K N. JUDSON.

416 FRIDAY, *August 5th, A. D.* 1889.

Present: Hon. Walter Q. Gresham.

In the Circuit Court of the United States for the Southern District of Illinois.

BELLE N. B. WADE and WARNER M. HOPKINS, Trustees, Complainants,
vs.
THE CHICAGO, SPRINGFIELD & ST. LOUIS RAILROAD Company, The St. Louis and Chicago Railway Company, The Litchfield & St. Louis Railway Company, The Mercantile Trust Company of New York, and The Central Trust Company of New York, Defendants. } In Equity.

Decree of Foreclosure and Sale.

Now, on this 5th day of August, 1889, come the following parties, by their solicitors—complainants Belle N. B. Wade and Waren M. Hopkins, by Brown, Wheeler & Brown and Hough, Overall & Judson, their solicitors, and defendants The Chicago, Springfield & St.

Louis Railroad Company, The St. Louis & Chicago Railway Company, and the Litchfield & St. Louis Railway Company, by Conkling & Grout, their solicitors, and defendant The Mercantile Trust Company of New York, by Alexander & Green and C. W. Fairbanks, their solicitors, and defendants The Central Trust Company of New York, by Butler, Stillman & Hubbard, their solicitors, and defendant The American Loan and Trust Company, by Granville P. Hawes, its solicitor—and this cause, coming on to be heard upon the pleadings and the evidence, was argued by counsel.

417 And, on consideration thereof, the court finds therefrom as follows, to wit:

That on the first day of May, 1883, the Chicago, Springfield & St. Louis Railroad Co., defendant herein, made and executed its certain 2,500 bonds, numbered consecutively from one to two thousand and five hundred, inclusive, each for the sum of $1,000, bearing date the 1st day of May, 1883, and bearing interest from said 1st day of May, 1883, at the rate of six per cent. per annum, payable semi-annually, and evidenced by coupons thereto attached, the bonds payable thirty years after date, and that for the purpose of securing the prompt payment of interest accruing on said bonds and the principal thereof said defendant, The Chicago, Springfield — St. Louis Railroad Company, executed, acknowledged, and delivered to defendant The Central Trust Company of New York, as trustee, its certain mortgage or deed of trust thereby conveying to said Central Trust Company, its successors or assigns, all and singular the several pieces or parcels of land forming the track or roadbed of said railroad company from a point on the Gilman & Clinton branch of the Illinois Central railroad at the city of Springfield and extending by way of Litchfield and Mount Olive to the bridge junction at East St. Louis, Illinois, a distance of about 98 miles, passing through Crow's Mill, Pawnee, White Oak, Litchfield, Mount Olive, Alhambra, Marine, Troy, and Collinsville, being in and through the counties of Sangamon, Montgomery, Macoupin, Madison, and St. Clair, whether the same was then acquired and owned by said railroad company or might be thereafter acquired and owned by said railroad company; also the railroad of said Chicago, Springfield & St. Louis Railroad Co. and any and all branches thereof and any and all switches, turnouts, rails, bridges, depots, stations, station-houses, section-houses, fences, and other

418 structures and appurtenances thereto belonging then owned by said railroad company or that might thereafter be constructed, completed, finished, acquired, or owned by said railroad company, and also all the tolls, incomes, issues, profits, and alienable franchises of said railroad company connecting with its railroad or relating thereto, including its right and franchises as a corporation, and also all and singular the property of every kind therein mentioned whether then owned or that might thereafter be acquired and owned by said railroad company—that is to say, all the rolling stock of every description, all the machine shops, car shops, blacksmith shops, all the machinery, stationary engines, and all articles used in the construction, replacing, and repairing thereof,

together with all the tools, material, and any and all property then owned or thereafter to be acquired by said railroad company; that said mortgage or deed of trust was regularly recorded in the recorders' offices of the several counties through which the said railroad run and in the office of secretary of state of the State of Illinois on or prior to the 31st of May, A. D. 1883.

That prior to the date of said mortgage, on, to wit, the 3rd day of March, 1883, the defendant The Chicago, Springfield & St. Louis Railroad Company entered into a contract with the Empire Construction Company whereby the latter company undertook and agreed to procure the right of way (where same had not already been procured), material, and labor necessary to construct, iron, bridge, complete, and equip the line of railroad of said railroad company, commencing at a point on the Gilman & Clinton branch of the Illinois Central railroad at the city of Springfield and extending by way of Litchfield and Mount Olive to the bridge
419 junction at East St. Louis, Illinois, a distance of about 98 miles, passing through Crow's Mill, Pawnee, White Oak, Litchfield, Mount Olive, Alhambra, Marine, Troy, and Collinsville, at and for the sum of $2,500,000 of the par value of the negotiable bonds of the railroad company thereafter to be issued and $992,000 of its capital stock at par, and it was and is by said contract agreed that the construction company should begin the construction of said railroad in sixty days after the date of said contract, and fully complete and equip the same as therein provided for within three years thereafter, and upon the final completion of said railroad it was agreed to turn over said railroad to the said railroad company in good order.

That it was provided in said contract that when the said construction company should have constructed and completed of the said railroad any one mile, and should have received from the chief engineer certificate that such amount of said railroad had been completed according to contract, said construction company was entitled to receive from the trustee in said mortgage, and not otherwise, twenty-five of the said bonds and eighty shares of stock for said mile, and so from time to time, as said railroad might be completed in sections of one mile each, said construction company was entitled to receive a like sum on the certificate of the chief engineer that one mile of road had been completed.

That on the 25th day of October, 1883, there were delivered to the Empire Construction Company fifty of said bonds, numbered from one to fifty, inclusive, upon two certificates of the chief engineer of said railroad company that two miles of said railroad had been completed according to contract, and that said fifty bonds are the only bonds issued and outstanding of said twenty-five hundred bonds.

420 The court finds that the two miles of road so completed were in most part constructed upon and through the streets of the city of Litchfield under license from the city council granted to said railroad company to occupy the said streets; that subsequently, but prior to the 1st day of July, 1885, the said track in said streets was taken up and the material sold and the streets leveled

and restored to their original street grade and were occupied by the public, and none of the said track or material so taken up went into the construction of the St. Louis & Chicago railway.

That on the 5th day of November, 1883, D. L. Wing, then being the president and the owner of the entire capital stock of said construction company, pledged the said bonds and the entire capital stock of said construction company, together with other securities, to Robert B. Wade to secure the endorsement of said Wade upon a note to the said Wade's order, dated November 5th, 1883, for the sum of $35,000, payable four months after date at the Bank of Commerce, St. Louis, Mo., it being optional with said Wing to renew said note for a period of two months after its maturity, and the said Wade was given the option by the said Wing at the time of said pledge before the maturity of said note to purchase an interest in the capital stock of said Empire Construction Company and the claim of said Wing against said construction company for advances made by said Wing thereto, amounting to thirty-five one hundred and fifths ($\frac{35}{105}$) of the total amount thereof, and in the event of exercising said option of purchase the money so borrowed was to be treated as payment for said interest in the stock of said construction company.

And the court finds that the said Wade at the time of said pledge was informed of and knew the terms of said construc-
421 tion contract and of the rights of said construction company and said Wing therein and thereunder. The said note was not paid at maturity and said option of purchase was not exercised, and the said bonds were on the 15th day of December, 1886, sold under the terms of the pledge and were purchased and are held by the complainants, who were and are the testamentary trustees appointed by the will of the said Robert B. Wade, deceased, at and for the sum of $20,000, and that the balance of the amount of said note of $35,000 and interest, after crediting the same with the $20,000 so realized from the sale of the said fifty bonds, was fully paid in part out of the collaterals other than said fifty bonds and in part by enforced payments from the said D. L. Wing; that the complainants are the holders of said fifty bonds, together with the interest coupons thereon which matured May 1, 1884, and all interest coupons thereon since matured and to mature.

That the said Empire Construction Company proceeded about April, 1883, with the work of constructing said railroad by procuring a portion of the rights of way therefor, making surveys, plats, and profiles, constructing embankments and trestles between Litchfield and Mt. Olive and over portions of the line at various intervals north of Litchfield, extending over a space in the aggregate of about thirty miles, and in July or August, 1883, the work of construction was abandoned; that the contracts and instruments securing right of way were delivered to the Empire Construction Company and were subsequently transferred by that company to the St. Louis & Chicago — Litchfield & St. Louis R. R. Company, but none of said contracts and no deeds conveying right of way to said construction company or to the Chicago, Springfield & St. Louis Railroad Com-

pany were recorded in the recorder's office of the proper
422 counties; that on the 19th day of May, 1885, the St. Louis & Chicago Railway Company was organized and authorized to construct a railroad from the Indianapolis and St. Louis railway track in Litchfield, Illinois, north to the city of Springfield, in the same State.

That on the 29th day of May, 1885, the Litchfield & St. Louis Railway Company was organized and authorized to construct a railroad from the Indianapolis and St. Louis Railway in Litchfield south to the city of East St. Louis, Illinois.

That on the 26th day of May, 1885, the Empire Construction Company, for the consideration of $142,015.11, conveyed to a firm designated as H. H. Cooley and Company all right of way theretofore secured for the Chicago, Springfield & St. Louis Railroad Company, all cross-ties, excavations, trestle-work, tiling, and all work done and materials provided for the construction of the Chicago, Springfield & St. Louis railroad between Litchfield and Springfield; that said conveyance was duly recorded in the recorder's office of Montgomery county, Illinois, May 27th, 1885.

That on the 26th day of May, 1885, the said H. H. Cooley and Company, in consideration of one dollar and in consideration of a contract entered into between the St. Louis and Chicago Railway Company and H. H. Cooley and Company, conveyed to the said St. Louis & Chicago Railway Company the same property and rights heretofore conveyed by the Empire Construction Company to H. H. Cooley and Company by the said deed of May 26th, 1885, which said last-named deed was recorded in the recorder's office of Montgomery county, Illinois, on June 1st, 1885, according to law.

The court further finds that on the 1st day of July, 1885, the said St. Louis & Chicago Railway Company executed a deed
423 of trust to the defendant The Mercantile Trust Company covering its entire line of railroad from the city of Springfield to the city of Litchfield, in the State of Illinois, and the said trust deed was duly recorded according to law in the recorder's office of each of the counties through which the line of said railway extends, and that the said St. Louis & Chicago Railway Company took possession of said uncompleted line of railroad conveyed by the Empire Construction Company after the delivery of the conveyance by H. H. Cooley & Company and mingled other works and materials therewith, and completed its said railroad during the year 1886 from Litchfield to Springfield.

That on the 12th day of June, A. D. 1886, the Empire Construction Company conveyed to H. H. Cooley and Company, for the consideration of $5,000, all the real estate and personal property, rights, credits, and easements acquired by the Empire Construction Company for the Chicago, Springfield & St. Louis Railroad Company south of the Indianapolis and St. Louis railway and between Litchfield, Illinois, and Alhambra, Illinois, on the line of survey made for the Chicago, Springfield & St. Louis Railroad Company and all embankments, excavations, trestle-work, and all other work done in the building and construction of a railroad on the line of survey

between Litchfield and Alhambra; that on the same date, June 12, 1886, the said H. H. Cooley and Company, for the expressed consideration of $75,000, conveyed the same property and rights under the same description to the Litchfield & St. Louis Railway Company; that said Litchfield & St. Louis Railway Company took possession of the said uncompleted line of railroad and mingled other work and material therewith and upon a survey made and
424 in accordance with plats and profiles thereto made for the Chicago, Springfield & St. Louis Railroad Company did complete a line of railroad from Litchfield to Mt. Olive, Illinois, and did also appropriate the rights acquired by and for the Chicago, Springfield & St. Louis Railroad Company between Mt. Olive and Alhambra, Illinois.

That defendant The Central Trust Company of New York, trustee in the aforesaid mortgage or deed of trust executed by the Chicago, Springfield & St. Louis Railroad Company, has resigned its said trust and has declined to institute this suit to foreclose said mortgage, although requested so to do by complainants.

It is therefore ordered, adjudged, and decreed by the court as follows:

First. That the bill of complainants as to the Mercantile Trust Company be, and the same is hereby, dismissed.

Second. That the bill of complainants as to the said St. Louis & Chicago Railway Company as to the railway between Litchfield and Springfield, Illinois, be, and the same is hereby, dismissed.

Third. That the said defendant, The Chicago, Springfield & St. Louis Railroad Company, or some one in its behalf pay to the complainants within ninety days from this date the sum of $22,976.59, being the said sum of twenty thousand dollars for which the said bonds were bid off by complainants and six per cent. interest thereon from the 16th day of December, A. D. 1886, the date of said sale, together with interest thereon from this date until paid, and that the said Chicago, Springfield & St. Louis Railroad Company or some one in its behalf pay the cost of this suit, to be taxed.

Fourth. That in default of such payment all the right, title, interest, and equity of redemption of said Chicago, Springfield
425 & St. Louis Railroad Company and of the Litchfield & St. Louis Railway Company and the St. Louis & Chicago Railway Company in and to that portion of the property described in said mortgage and lying south of the Indianapolis & St. Louis railroad originally surveyed and laid out for the Chicago, Springfield & St. Louis Railroad Company and described as follows: The several pieces or parcels of land forming the track or road-bed of the railroad now known and called the Litchfield and St. Louis railway from a point where said Litchfield and St. Louis railway and the St. Louis and Chicago railway cross the Indianapolis and St. Louis railroad in Litchfield, Montgomery county, Illinois, and running thence to Mount Olive, in Macoupin county, Illinois, and thence to the bridge junction at East St. Louis, in St. Clair county, Illinois, and passing through Alhambra, Marine, Collinsville, all in Illinois, and passing through the counties of Montgomery, Macoupin, Madi-

son, and St. Clair, together with structures, superstructures, privileges, and appurtenances thereon constructed or thereto belonging or appertaining, be sold by Bluford Wilson, special master in chancery now by the court *in* that purpose appointed; that he sell the same at the north door of the Government building in the city of Springfield, Illinois, to the highest bidder for cash; that notice of such sale shall be given by said special master after default in payment as aforesaid by advertising once in each week for three successive weeks in some newspaper published in the city of Springfield, Illinois, in which the hour for said sale shall be stated; that the sum of three thousand dollars in cash shall be paid to said special master at the time of said sale by the purchaser thereat and the balance of the amount of the bid when said sale shall be confirmed by the court; that said sale be made without any right of
426 redemption, and on the approval of said sale by the court the said special master execute, acknowledge, and deliver to the purchaser a deed therefore; that out of the proceeds of said sale the special master shall first pay the costs of this suit and the costs and expenses attending the execution of this decree and, secondly, the amount decreed herein to the complainants, with — thereon at six per cent. per annum from this date.

And the said special master will report his actions and doings herein to the court.

And thereupon the complainants filed in writing a petition for rehearing in said cause, which was and is in the words and figures following, to wit:

United States Circuit Court, Southern District of Illinois, June Term, 1889.

BELLE N. B. WADE *et al.*
vs.
CHIC., SP'F'D & ST. L. R.

Now comes the complainants and move the court to set aside the order and decree this day made and to rehear the cause for the reasons following, to wit:

1st. That the issue upon which the decision of the court was rendered limiting the amount of their recovery upon their bonds against the property covered by the mortgage in suit to the sum of twenty thousand dollars, with interest thereon from December 5th, 1886, is not in any manner presented or suggested by the pleadings in this cause, and the decree as ordered has no warrant whatever in the pleadings in the cause.

2nd. That the testimony in the record of D. L. Wing as objected to by complainants and the contract of Nov. 5th, 1883, are wholly irrelevant, incompetent, and inadmissible evidence under the
427 pleadings and should have been excluded by the court, and no decree can be based thereon.

3d. That the complainants have had no day in court upon the question of their alleged laches in regard to enforcing their security

nor as to the limitation of their recovery for any reason to the original cost of their bonds, no such question having been raised by the pleadings and no opportunity having been given to complainants to be heard thereon.

4th. That complainants were taken by surprise upon the hearing of said cause, in the consideration of the said testimony by the court, and in the entry of the judgment and decree in said matters upon issue not made in the pleadings.

5th. That complaina-ts can prove and hereby offer to prove, whenever such issue is properly made by the pleadings, that when the agreement of November 5th, 1883, was made between D. L. Wing and R. B. Wade, R. B. Wade was at the time suffering from what proved to be his mortal illness, he being a few days thereafter confined to his bed, from which he never rose, but died in January, 1884; that he had no interest, direct or indirect, in the construction contract of the Empire Construction Company nor was the privilege or option set forth in said agreement of November 5th, 1883, ever exercised; that at the time of his death said collateral securities were in the possession of the Bank of Commerce of St. Louis, securing said note, and that upon maturity thereof and the financial failure of said Wing in the summer of 1884 said securities were placed in the hands of the complainants' attorney, who at once took steps to enforce the same in every possible way by conferring with Wing and endeavoring to induce him to take up said collaterals and
428 by incurring large expenses in pursuit of such purpose, being compelled to go to Massachusetts to assist in winding up a bankrupt estate in connection therewith; that as soon as it was learned in 1885 that it was intended to resume the construction of said line of road complainants' attorney called upon said Wing for explanation and tried to induce him then to take up said bonds; that complainants had no knowledge of the manner in which said road was being constructed nor of the conveyance of the Empire Construction Company to the new railroad company nor of the organization of said new companies until long after the actual issue of the bonds under the mortgage of the Mercantile Trust Company; that as soon as they heard of it they communicated with said Wing, who was the president of the St. Louis & Chicago Railway Company, and were assured by him it was the intention to provide for them in said reorganization; that complainants were lulled into security by repeated statements, both oral and written, of said Wing, till, finding that his promises were not performed, finally, in October, 1886, they applied to him and again secured a promise from him of an exchange of said securities for the securities of the new company to be held in pledge, and upon said Wing failing to comply with said promise and repeated other promises and said Wing repudiating all obligation on the part of the new companies to provide for said bonds complainants were at last constrained to notify said Wing that said bonds would be sold and his rights as pledgor cut off; but not desiring to take said bonds and wishing to give the holders of the new bonds every opportunity to relieve them from the expense and trouble of litigation that complainants endeavored to

ascertain who were the holders of said bonds, and learning that certain firms of bankers and brokers in New York city, among
429 other F. C. Hollins & Co., H. B. Hollins & Co., Hatch & Foote, and others, were interested in said bonds, they notified them of said intended sale and made advertisement of such sale in the newspapers, although under the contract they were not obliged to give any notice whatever, but failing to induce any of the parties interested to buy said bonds, or even to bid upon them, complainants were finally, for their own protection, compelled, on December 15th, 1886, to buy in said bonds; that said notices and said communications with Wing were in writing, and that said writings and communications are in the possession of complainants and their attorney and can be produced; and complainants further state that they did not buy in said bonds until they had exhausted all other means of protecting themselves, and that they did not take proof of these facts before the hearing, because they were advised they were not properly admissible under the pleadings and that there was no such issue in the case; and they do also state further that, so far from it having been their intention by their conduct to lull into false security other parties in interest, on the contrary they made every effort to induce said other parties to take said bonds off their hands and used every means in their power to prevent new parties from investing in subsequent issues of bonds in ignorance of their claims; that as soon as complainants learned from the newspapers of the intended issue of the bonds under mortgage to the American Loan and Trust Company, although this suit was then pending, they notified in writing said trustee of their claim under this mortgage, and when complainants learned of the application to list said bonds on the stock exchange of New York city they notified in writing the governing committee of said stock exchange of their said claim.

430 6th. And complainants ask for a rehearing and setting aside of the decree rendered in this cause for the further reason that as to the part of the line south of the Indianapolis & St. Louis tracks in the city of Litchfield now occupied by the Litchfield & St. Louis Railway Company it appears from the testimony and from the facts admitted on the hearing of the cause that the only subsequent incumbrance of record is that of the deed of trust to the American Loan and Trust Company, which was first placed on record and the bonds thereunder issued long after the filing of complainants' bill herein, and that all the bonds thereunder were issued and purchased with full notice of the rights of complainants, it having been admit-ed on the hearing that since the institution of this suit the mortgage or deed of trust to the Central Trust Company upon the property occupied by the Litchfield & St. Louis R. R. Co., referred to in the bill of complaint, has been cancelled and released of record, and complainants further state and offer to prove that since the institution of this suit they give written notice to said American Loan and Trust Company of their paramount claim as soon as they heard of said new issue of bonds, and that they gave such notice to the following committee of the New York stock ex-

change as soon as they hearing of the application to test said securities upon said exchange.

BELLE N. B. WADE AND WARNER HOPKINS,
By BROWN, WHEELER & BROWN, *Their Solicitors.*

Frederick N. Judson, being duly sworn, upon oath states that he has read the foregoing motion and that he has personal knowledge of the facts *set* therein set forth and offered to be
431 proved, and that the same are true.

F. N. JUDSON.

Subscribed and sworn to before me June 8th, 1889.

JAMES T. JONES, *Clerk.*

Which petition the court then and there denied.

To which decree and the action of the court in denying said petition for a rehearing the complainants then and there excepted and pray an appeal to the Supreme Court of the United States, which is allowed by the court upon the complainants entering into bonds, with security to be approved by the clerk within sixty days, payable to the defendants, in the sum of five hundred dollars.

And defendant The American Loan and Trust Company prays an appeal to the Supreme Court of the United States, which is allowed by the court on said defendant giving bond for cost of same of five hundred dollars, to be approved by the clerk; and it is further ordered that said appeal of defendant The American Loan and Trust Company shall operate as a supersedeas of said decree on said defendant giving bond within sixty days in sum of thirty thousand dollars.

Now, afterwards, to wit, on the 1st day of October, in the year last aforesaid, came Belle N. B. Wade and Warner M. Hopkins and filed in the clerk's office of said court their bond on appeal; which said bond is as follows, to wit:

Know all men by these presents that we, Belle N. B. Wade and Warner M. Hopkins, as principals, and Christopher C. Brown, as surety, are held and firmly bound unto the Chicago, Spring-
432 field & St. Louis Railroad Company, the St. Louis & Chicago Railway Company, the Litchfield & St. Louis Railway Company, the Mercantile Trust Company of New York, the Central Trust Company of New York, and the American Loan & Trust Company of New York in the penal sum of five hundred dollars; for the payment of which, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 24th day of September, A. D. 1889.

The condition of the foregoing obligation is such that whereas the above-named Belle N. B. Wade and Warner M. Hopkins have prayed for and been granted an appeal to the Supreme Court of the United States from a decree rendered in the circuit court of the

United States for the southern district of Illinois wherein they, the said Belle N. B. Wade and Warner M. Hopkins, are complainants and the aforesaid obligees are defendants:

Now, therefore, if the above-name- Belle N. B. Wade and W-rner M. Hopkins shall prosecute their said appeal to effect and answer all damages and costs in case of failure therein, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

BELLE N. B. WADE AND [SEAL.]
WARNER M. HOPKINS, *Trustee*, [SEAL.]
By WARNER M. HOPKINS.
F. N. JUDSON. [SEAL.]
C. C. BROWN. [SEAL.]

Approved Oct. 1st, 1889.

JAMES T. JONES, *Clerk*.

(Endorsed:) Filed Oct. 1st, 1889. James T. Jones, clerk.

433 Afterwards, to wit, on the 4th day of October, came the American Loan & Trust Company of New York and filed its bond on appeal; which said bond is as follows, to wit:

Supreme Court of the United States.

BELLE N. B. WADE and WARNER M. HOPKINS, Complainants,
vs.
THE CHICAGO, SPRINGFIELD, & ST. LOUIS RAILROAD Company, The St. Louis & Chicago Railway Co., The Litchfield & St. Louis Railway Co., The Mercantile Trust Co. of New York, The Central Trust Co. of New York, The American Loan & Trust Co. of New York, Defendants. } In Equity.

Know all men by these presents that we, the American Loan & Trust Company of New York, and we, —— ——, of ——, are held and firmly bound unto Belle N. B. Wade and Warner M. Hopkins, trustees, of St. Louis, Missouri, in the sum of five hundred dollars, to be paid to the said Belle N. B. Wade and Warner M. Hopkins, trustees, their executors, administrators, or assigns or successors; to which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, administrators, and successors, firmly by these presents.

Sealed with our seals. Dated this 4th day of October, 1889.

Whereas the above-named The American Loan & Trust Company hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action on

the 5th day of August, 1889, by the judge of the United
434 States circuit court for the southern district of Illinois;

And whereas by said decree rendered August 5th, 1889, it was provided, among other things, that the defendant The American Loan & Trust Company be allowed an appeal to the Supreme Court of the United States on said American Loan & Trust Company giving bond for costs in the sum of five hundred dollars, to be approved by the clerk:

Now, therefore, the condition of this obligation is such that if the above-named American Loan & Trust Company shall prosecute its appeal aforesaid to effect and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

Sealed and delivered and taken and acknowledged this 4th day of October, 1889, before me—

THE AMERICAN LOAN & TRUST
COMPANY OF NEW YORK,
By J. H. MATHENY, JR., *Solicitor.* [L. S.]
FRANK W. TRACY. [L. S.]

Approved by me Oct. 4th, 1889.

JAMES T. JONES, *Clerk.*

(Endorsed:) Filed October 4th, 1889. James T. Jones, clerk.

435 UNITED STATES OF AMERICA, }
Southern District of Illinois, } *ss:*

I, James T. Jones, clerk of the circuit court of the United States in and for the southern district of Illinois, do hereby certify that the foregoing is a true and complete copy of all the papers filed and proceedings thereon had in a certain cause wherein Belle N. B. Wade and Warner M. Hopkins are complainants and The Chicago, Springfield & St. Louis Railroad Company, The St. Louis & Chicago Railway Company, The Litchfield & St. Louis Railway Company, The Mercantile Trust Company of New York, and The Central Trust Company of New York are defendants, as truly and completely as the same appear of file and record in my said office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at Springfield, in said district, this 11th day of October, A. D. 1889, and of our Independence the 114th year.

[The Seal of the Circuit Court of the United States for the South'n Dist. Ill.]

JAMES T. JONES, *Clerk.*

436 In the Supreme Court of the United States, October Term, A. D. 1889.

BELLE N. B. WADE and WARNER M. HOPKINS, Appellants,
vs.
CHICAGO, SPRINGFIELD & ST. LOUIS RAILroad Company, The St. Louis & Chicago Railway Company, The Litchfield & St. Louis Railway Company, The Mercantile Trust Company of New York, The Central Trust Company of New York, and The American Loan & Trust Company, Appellees.

From the Circuit Court for the Southern District of Illinois.

And now come the said appellants and say that in the record and proceed ings aforesaid manifest error hath intervened to the prejudice of the said appellants, and thereupon they assign the following:

(1.) The court erred in dismissing the complainants' bill as to the Mercantile Trust Company.

2. The court erred in dismissing the complainants' bill as to the St. Louis & Chicago Railway Company.

3. The court erred in denying appellants' a lien upon the line of railway north of Litchfield.

4. The court erred in failing to decree the payment of the full amount due on the fifty bonds held by the complainants.

5. The court erred in failing to decree the full payment of the fifty bonds held by complainants, together with interest thereon, and decreeing the complainants a prior lien for said amount upon the entire line of railway specified in their bill.

6. The court erred in denying the complainants' motion for
437 a rehearing.

7. The court erred in denying the complainants the entire relief prayed for in their original bill.

Wherefore for these and other good and sufficient reasons the said appellants pray that the decree aforesaid may be reversed and the cause remanded to the said circuit court for further proceedings.

FREDERICK N. JUDSON &
SAMUEL P. WHEELER,
Attorneys for Appellants.

Endorsed on cover: Case No 13,857. S. Illinois C. C. U. S. No. 247. Belle N. B. Wade and Warner M. Hopkins, trustees, appellants, *vs.* The Chicago, Springfield & St. Louis Railroad Company, The Mercantile Trust Company of New York, *et al.* Case No. 13,858. No. 248. The American Loan & Trust Company of New York, appellant, *vs.* Belle N. B. Wade and Warner M. Hopkins, trustees. Filed October 21, 1889.

149 U.S. 321

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JAMES H. McKENNEY
Cl.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

BELLE N. B. WADE AND WARNER M. HOPKINS, APPELLANTS,
vs.
CHICAGO, SPRINGFIELD & ST. LOUIS R. R. CO. ET AL, APPELLEES. } 247.

DALLAS B. PRATT, APPELLANT,
vs.
BELLE N. B. WADE AND WARNER M. HOPKINS, APPELLEES. } 248.

Statement and Brief for Complainant-Appellants.

FREDERICK N. JUDSON
AND CHARLES S. TAUSSIG,
WITH WHOM IS SAMUEL P. WHEELER,
For Complainant-Appellants.

Nixon-Jones Printing Co., 215 Pine St., St. Louis.

INDEX.

	PAGE.
STATEMENT	1 to 26
Bill of Complaint	1 to 6
Answers:	
Central Trust Co	6
Mercantile Trust Co	7
Chicago, Springfield & St. Louis R. R.	7
St. Louis & Chicago	8
Litchfield & St. Louis	8
Stipulation that complainants were holders of bonds	9
Summary of proofs	10 to 12
Concealment of evidence	12
Execution of mortgage	12
Contract with Empire Construction Co.	13
Construction north of Litchfield	14
Valuation of construction north of Litchfield	15
Construction south of Litchfield	15
Suspension of construction	16
Negotiations for continuation of construction by old company	16
Organization of St. Louis & Chicago Ry.	17
Cooley conveyances	18 to 20
Completion of road north of Litchfield by St. Louis & Chicago	21
Cooley conveyances and completion south of Litchfield	23 to 24
Wing's testimony	24 to 25
Hearing	25
Motion for rehearing	25
Intervention of American L. & T. Co	25
ASSIGNMENT OF ERRORS	27
BRIEF	28 to 31
ARGUMENT	31 to 59
Departure from pleadings	31, 32
Mortgage attached to accessions made by new companies	31 to 38
Estoppel of defendants	37
Express notice to defendants, mortgagees	38 to 41
American L. & T. Co. acquired interest *pendente lite*	40 to 41
New corporations the successors of old	42 to 46
Mortgage lien covers entire road	46 to 49
Defendants' testimony irrelevant irrespective of pleadings	49 to 54
Decree erroneous upon its face	54 to 59
Defendant-appellees bound by findings of decree	57
Cross-appellant no standing in court	58

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

BELLE N. B. WADE AND WARNER M. HOPKINS,
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vs.
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Appellees.
247.

DALLAS B. PRATT,
Appellant,
vs.
BELLE N. B. WADE AND WARNER M. HOPKINS,
Appellees.
248.

Statement and Brief for Complainant-Appellants.

These are cross-appeals from the decree of the Circuit Court for the southern district of Illinois (Gresham, J.), one by complainants, the other by the American Loan & Trust Company (for whom Dallas B. Pratt, successor in

trust, has been substituted as appellant by order of this court), which became a party defendant to the cause after hearing in the court below.

Complainants appealed from so much of the decree of the Circuit Court as denied them a recovery upon the entire issue of bonds held by them, $50,000.00 and interest, upon the entire line of railroad described in the bill, and the American Loan & Trust Company appealed from so much of the decree as awards complainants a lien for $20,000.00 upon part of the line of railroad in question.

The bill in this case was filed on Jan. 25th, 1887, by complainants, citizens of Missouri, against the Chicago, Springfield & St. Louis R. R. Co., the Litchfield & St. Louis Ry. Co. and the St. Louis & Chicago Ry. Co., all Illinois corporations, and the Mercantile Trust Company and the Central Trust Company, both of New York, and set forth the following state of facts, as to none of which is there any substantial controversy in the record.

The Chicago, Springfield & St. Louis Railroad was organized to build a railroad from the city of Springfield through Litchfield and Mount Olive to East St. Louis, Ill., and being duly organized and authorized, and having made a contract with a construction company, known as the Empire Construction Company, to build and equip such line of road, executed 2,500 bonds of $1,000 each with semi-annual interest coupons, securing the same by a mortgage to the Central Trust Company, of New York. The property included in this mortgage is described therein as follows (Rec., p. 96):

"All and singular the several pieces or parcels of land "forming the track or road way of said railroad company "from a point of the Gilman and Clinton Branch of the "Illinois Central Ry. at the city of Springfield, extending "by way of Litchfield and Mount Olive to the Bridge "Junction at East St. Louis, Ill., a distance of some 98

"miles and passing through the towns of Crow's Mills, "Pawnee, White Oak, Litchfield, Mount Olive, Alhambra, "Nervine, Troy and Collinsville, and being in and through "the counties of Sangamon, Montgomery, Macoupin, "Madison and St. Clair, whether the same is now acquired "and owned by said railway company, or *may hereafter be* "*acquired and owned by said company:* also the railroad "of said party of the first part and any and all its "branches thereof, and any and all switches and turn-"outs thereof, together with all the rails, bridges, "depots, stations and station houses, section houses, "fences and other structures and appurtenances thereto "belonging, now owned by said railroad company or "*that may hereafter be constructed, completed, finished,* "*acquired or owned* by said company; also all the tolls, "income, issues and profits, alienable franchises of said "railroad or connecting with its railroad or relating there-"to including its *right and franchises as a corporation,* "and also all and singular the property of every kind "hereinafter mentioned, whether now owned *or that may* "*hereafter be acquired and owned* by said railroad com-"pany, that is to say, all the rolling stock of every de-"scription, all the machine shops and blacksmith shops, "all the machinery and stationary engines and all articles "used in the construction, replacing and repairing thereof "together with all the tools and material and any and all "property then owned or *thereafter to be acquired.*"

The bonds thus secured were dated May 1st, 1883, and soon thereafter the mortgage was recorded in the several counties through which the railroad was located and in the office of the Secretary of State of Illinois.

Under the contract between the Chicago, Springfield & St. Louis R. R. Co. and the Empire Construction Co. the construction company undertook and agreed to acquire said right of way for the railroad and to construct, complete and equip said railroad. The railroad was thereupon surveyed and located, and the right of way from 50 to 100 feet in width secured by purchase, gift or otherwise by the con-

struction company for the railroad. In addition to securing the right of way by contract for a large part of the located line, the franchise to occupy certain streets and other property in the city of Litchfield was secured by ordinance, and a large amount or grading, trestleing and other work of construction was done both north and south of Litchfield, mainly in Montgomery County, in which Litchfield is located, extending over some thirty miles.

The contract between the construction company and the railroad provided, that $25,000.00 of these bonds should be certified by the trustee and issued and delivered to the construction company, upon the completion of each mile of work as certified by the chief engineer of the road. Two miles of the road were completed and certified, and thereupon $50,000.00 of bonds were certified by the trustee, the Central Trust Co. and issued to the Empire Construction Company. These $50,000.00 of bonds constituted the entire issue under the mortgage and of this entire issue, the bill averred the complainants were the holders. After the issue and negotiation of these bonds, the work of construction was suspended. Subsequently, in the spring of 1885, after an interval of some eighteen months, one D. L. Wing, who had been the leading spirit of the enterprise and in fact owned all the stock of the Empire Construction Company, organized two new railroad companies to carry on and complete the work of construction already commenced. This was done north of Litchfield for the completion of the line between Litchfield and Springfield under the name of the Chicago & St. Louis Ry. Co., and south of Litchfield under the name of the Litchfield & St. Louis Ry. Co., and caused all the property acquired for the Chicago, Springfield & St. Louis R. R., which was subject to the lien of complainants bonds and mortgage, was delivered through the Empire Construction Co. which Wing controlled, to these new organizations.

Thereupon Wing and his confederates caused a mortgage to be placed upon the railroad north of Litchfield, *i. e.* that of St. Louis & Chicago Ry. Co., to the Mercantile Trust Company of New York, to secure $500,000.00 of bonds which the bill alleged were issued, with full notice to the Mercantile Trust Company of the prior rights of complainants as holders of the fifty bonds theretofore issued.

(The bill also alleged the issue of $1,000,000.00 second mortgage bonds to the Mercantile Trust Co., upon the line between Litchfield and Springfield also subject to the prior rights of complainants — but this mortgage was shown to have been released by the trustee after the filing of the bill, (Rec., p. 19) and requires no further notice.)

The bill also alleged that south of Litchfield the road already commenced and partially constructed by the Empire Construction Company for the Chicago, Springfield & St. Louis Railroad Co. and subject to the lien of complainant's mortgage, was completed by Wing and his confederates to Litchfield and Mount Olive, some ten miles, and was partially constructed to Alhambra, in Madison County.

(The bill also alleged that a mortgage had been issued by the Litchfield & St. Louis Ry. Co. to the Central Trust Co. of New York with full notice of complainants' prior rights, to secure $200,000.00 of bonds in the portion of the line south of Litchfield. This mortgage also was subsequently released as admitted at the hearing (*infra*, p. 24), leaving this part of the line free from any subsequent lien claim existing at date of filing of the bill.)

The bill further alleged that the Chicago, Springfield & St. Louis Railroad was insolvent, and that the Central Trust Company, the trustee in their mortgage, had declined to proceed in the execution of its trust, and had notified

complainants of its intention to resign its trusteeship in their mortgage as well as in that executed by the Litchfield & St. Louis Ry. Co.; alleged default in the payment of interest coupons since November, 1883, and prayed for a decree of foreclosure and that the lien of their mortgage be declared a first lien on all other property acquired by or for the Chicago, Springfield & St. Louis R. R. Co. before or after the date of their mortgage, and prior to the claim or right of any of the parties defendant under the other deeds of trust set out in the bill and for further relief.

The several defendants were duly notified and appeared and made answer to the bill.

The Central Trust Company (Rec., p. 12), made answer admitting the execution and delivery to it of the mortgage of the Chicago, Springfield & St. Louis R. R. Co., the issue of the 50 bonds alleged in the bill, and the execution and delivery of the mortgage of the Litchfield & St. Louis Ry. Co. as alleged. Also that complainants had applied to it to file a bill for the foreclosure of the Chicago, Springfield & St. Louis R. R. Co.'s mortgage but that it had refused to do so, and declared its purpose of resigning its trusteeship in both mortgages and that in fact it had resigned both, and that the reason for such resignation "was that it was "advised by counsel that owing to its trust relation to the "holders of the bonds secured by each mortgage it ought "not to take part on behalf of one or the other in any con- "troversy between such bondholders, and that the rights "of the complainants could be fully protected in any suit "or suits brought by said complainants in their own "names."

The three railroad companies, the Chicago, Springfield & St. Louis Railroad, The St. Louis & Chicago Ry. Co., and the Litchfield & St. Louis Ry. Co. at first filed a joint answer by the same counsel (Rec., p. 13) denying all the

material allegations of the bill. Separate answers, however, were afterward filed by the same defendants through same counsel, specifically admitting or denying the allegations of the bill (Rec., pp. 20–32), which will be hereafter noticed.

The Mercantile Trust Co. by its answer (Rec., p. 17) admitted the incorporation of the St. Louis & Chicago R. R. Co. and the execution of the mortgage to it by that company as alleged in the bill, and denied that it accepted the trust with notice and subject to the prior rights of complainants, and disclaimed knowledge as to the other matters contained in the bill.

Thereafter, the three railroad companies, all appearing by the same counsel, filed separate answers.

The answer of the Chicago, Springfield & St. Louis R. R. Co. (Rec., pp. 28–31) admitted the execution of the mortgage sued upon and the execution of the 2,500 bonds and the issue and certification of fifty by the Central Trust Company and that *complainants were the holders of the entire issue of fifty bonds outstanding*, as alleged in the bill of complaint. It admitted that the construction of the railroad company was commenced by the Empire Construction Company, composed of D. L. Wing and his associates, and that the line of the railroad was surveyed and located and certain contracts for rights of way obtained by the Empire Construction Company, but that the railroad company had "only a contingent interest therein," and that it never at any time became entitled to nor did it have any interest in the same except as to part of Adams street in the city of Litchfield, Ill., and as to that part, it only had a license to pass over that part of the street, and that the license had been revoked by the city council of the city of Litchfield. Denied that it had received any deeds for right of way or any contracts and never had and did not then have any right to such right of way. It admitted the general

course of its line to have been as stated in the bill of complaint. Admitted that the Empire Construction Company caused work and labor to be done and material to be furnished in the work of constructing the road and that about two miles of railroad track had been laid at the time stated; that this track was laid on Adams street in the city of Litchfield under licence "which was afterwards revoked "and the ties and rails removed by sundry evil disposed "persons." It also admitted that the 50 bonds were certitified and delivered by the trust company to the Empire Construction Company, but it was alleged that these were in payment of said two miles of track and that was the only property which ever came under the terms of the mortgage. It admitted the stoppage of the work, but denied that either of the new companies had taken possession of any of its property. It admitted default as alleged and its own insolvency.

The answer of the St. Louis & Chicago Ry. Co. (Rec., pp. 20–24) made the same admission as to the execution of the mortgage and bonds and the issue and certification of 50 bonds, the *holding* of the entire issue by *complainants*, of the partial construction of the railroad for the Chicago, Springfield & St. L. R. R. Co., by the Empire Construction Company; made the same allegation as to the track on Adam street, in Litchfield, and as to default in the bonds. It further admitted its own insolvency, denied the allegations of the bill as to the circumstances of its own organization and that of the Litchfield & St. Louis Ry. Co., by Wing and his associates, admitted the execution of its mortgage to the Mercantile Trust Company but claimed that it was upon its own property and not upon property of the Chicago, Springfield & St. Louis Company, and denied that there was any lien upon any property held or claimed by it.

The answer of the Litchfield & St. Louis Ry. Co. (Rec

24–28) contained the same admissions, including that *complainants were the holders of the entire issue of fifty bonds* of the Chicago, Springfield & St. Louis R. R. Co., and also admitted the execution of the mortgage to the Central Trust Company as alleged in the bill, but denied the allegations of the bill as to the circumstances of its own organization, and denied that complainants had any lien upon any property held or claimed by any of the defendants.

Replications were duly filed to the several answers and a considerable amount of testimony was taken which established beyond all question the substantial allegations of the bill.

Although at the taking of some of this testimony, the counsel who had filed the separate answer of the Mercantile Trust Company were not notified, counsel representing the railroad companies were notified, and did appear and cross-examine, it was stipulated (Rec., pp. 36, 37) by stipulation dated May 24th, 1888, and filed June 1st, 1888 (Rec., p. 37), that such evidence should be read at the hearing against the Mercantile Trust Company with the same effect as against the other defendants. After this, counsel who had theretofore appeared for the railroad companies also specifically appeared for the Mercantile Trust Company (Rec., p. 173), and at the session before the examiner, wherein all the parties defendant were so represented, and after the original mortgage and the fifty bonds with coupons attached had been produced and offered in evidence, it was *admitted by all the defendants that complainants were the holders of the said (50) bonds and coupons* (Rec., p. 175).

The only issue made by the pleadings of the railroad companies (the American Loan & Trust Company, of which Mr. Pratt is the successor, was subsequently admitted as party defendant, and adopted the answer theretofore filed

by the mortgagor, the C., Sp. & St. Louis Railroad Co., Rec., pp. 46, 47), was that of the extent or limit of the lien of complainants' mortgage; *i. e.*, whether possession had been taken of the property covered by such lien, as alleged in the bill. The only additional issue made by the answer of the Mercantile Trust, aside from calling for formal proofs, was the denial of *notice* of the prior mortgage.

The proofs taken in the case, aside from the articles of incorporation of the several railroad companies (Rec., pp. 56–62) and the original mortgage sued upon and the fifty bonds outstanding (Rec., p. 174), and the citizenship of complainants, consisted of —

1st. The records of the Chicago, Springfield & St. Louis R. R. Co. (Rec., pp. 68–122), which included a copy of the original contract of the Empire Construction Company (Rec., pp. 85–90), which by stipulation was used in lieu of the original (Rec., p. 177), said record giving the corporate history of the company, including copies of the mortgage, bonds and coupons sued upon, with the details of the corporate action relating to the same.

2nd. The testimony of Mr. Southworth (Rec., pp. 145–173), who gave a detailed account of the location of the railroad and of the procuring of the rights of way contracts by him as president of the Chicago, Springfield & St. Louis R. R. Co. at different points along the entire route.

3rd. The testimony of Messrs. Henry H. Beach (Rec. 129–139) and John J. McLean (Rec., pp. 139–145), incorporators and directors of both the Chicago, Springfield & St. Louis R. R. Co. and the St. Louis & Chicago Ry. Co., the latter for a time secretary of the new company, who testified to the circumstances attending the organization

and history of each corporation as well as the location of both lines.

4th. B. F. Johnson (Rec., pp. 193–211 and 213), the sub-contractor who did the actual work of construction of the Chicago, Springfield & St. Louis road in 1883 under the Empire Construction Company, including assistance in procuring the right of way contracts, and also as sub-contractor under H. H. Cooley & Co., doing the actual work of construction of the St. Louis & Chicago Ry. Co. in 1885 and 1886, establishing the *identity* of the two lines of road — in other words, that in 1885 and 1886 he took the *unfinished work of the old road-bed* and *completed* it for a large part of the line.

5th. The testimony of L. S. Olmstead (Rec., pp. 178–193 and 211, 212), the engineer employed in 1885 at the time of the resumption of the work of construction, who in connection therewith made valuations of the old work of construction and of the value of all the property of the old company, throwing interesting light upon the peculiar transactions of that period.

6th. The ordinances of the city of Litchfield (Rec., pp. 215–217), giving franchises to the Chicago, Springfield & St. Louis R. R. Co. to occupy streets and other municipal property.

7th. The conveyances whereby the Empire Construction Co., the contractor for the Chicago, Springfield & St. Louis R. R. Co. undertook to transfer to the new companies the property of the first named company, which constituted the only color or pretense of title on the part of the new organizations, and which being recorded prior to the recording of the mortgage of the St. Louis & Chicago R. R. Co.

to the Mercantile Trust Company, constituted express notice to the holders of these bonds of the rights of the old railroad, and of the mortgage to which these rights were subject (Rec., pp. 124–229).

Considerable difficulty was encountered in ferreting out these transactions, as will be seen from reading the record, and in the effort which was stubbornly resisted at every turn to ascertain the facts, some testimony was elicited which afterward proved unnecessary.

Although the surveys, contracts, profiles and other papers of the Chicago, Springfield & St. Louis R. R. Co. were proved to have passed into the possession of the St. Louis & Chicago Ry. Co., at the time of its organization, that is, to have remained in the possession of D. L. Wing when he *re-incorporated himself* under that name (see testimony of Osborn, Rec., p. 183, and of Johnson, pp. 208–9) all efforts, including repeated notices to produce, were ineffectual to compel their production (Rec., pp. 122–217).

Despite these difficulties and concealment or destruction of evidence, the following facts were clearly established by uncontroverted testimony, and were substantially found by the court in its decree. They may be stated in chronological order as follows:

The Chicago, Springfield & St. Louis R. R. Co. was organized in Jan., 1883, under the general railroad law of Illinois for the construction of a railway between Springfield and East St. Louis in the State of Illinois. There had been a prior company, known as the Springfield & St. Louis, which had done nothing in the way of construction outside of making a few surveys (Rec., pp. 145, 146). For the purpose of constructing the road a mortgage of all the property acquired or to be acquired as hereinbefore recited (*supra*, p. 2–6) was duly authorized and executed to secure bonds amounting to $2,500,000.00 (Rec., pp. 92,

102). The leading spirit in the organization of this company was one D. L. Wing, the company being organized at his special dictation (Rec. 134 and 151, 152). He also organized the Empire Construction Company with a capital of $25,000.00 of which he was the president and holder of all the stock (Rec., pp. 130, 226, 232). He then undertook to raise the money for the construction of the railroad through the medium of this construction company, and a contract was executed between the railroad company and the construction company on March 3, 1883 (Rec. 85–90). Under this contract the Empire Construction Company undertook to construct, equip the railroad, and "to procure all unprocured rights of way" and to fully complete and equip the road within three years in consideration of receiving the entire issue of $2,500,000.00 in first mortgage bonds and $990,000 of a total of $1,000,000.00 capital stock of the railroad. By the terms of the contract the bonds and capital stock were deposited with the Central Trust Company of New York, and twenty-five bonds of $1,000.00 each and eighty shares of the stock were to be delivered by the trustee to the construction company upon the completion of each mile of road as certified by the engineer. It was also agreed that a change of route of the road might be made on certificate of the chief engineer and the consent of the president of the construction company, all the terms and conditions of the agreement to be applicable to the changed route.

Surveys had already been made along the proposed route, and active work was done immediately upon the execution of this contract in procuring rights of way contracts along the entire line.

Inasmuch as subsequent transactions differently affect the portions of the line lying respectively *north* and *south* of the Indianapolis & St. Louis R. R. Co.'s tracks in the city of Litchfield, that being the division between the subsequently

organized St. Louis & Chicago, and Litchfield & St. Louis roads, it may be convenient to note the history on these two divisions separately.

North of Litchfield.

The line of road ran north on the half section line on substantially an air line some 18 miles (Rec. 151). Thence the road diverged to the northeast a short distance and thence north into Sangamon County to the city of Springfield. The right of way along this line was secured by purchase or gift as fully detailed by Mr. Southworth, the president of the road (Rec. 145–173), and by Mr. Johnson, the subcontract or under the Empire Construction Company (Rec., pp. 193–195).

All these rights of way contracts were taken *in the name* of and for the benefit of the Chicago, Springfield & St. Louis R. R. Co. and in the cases where deeds were executed, and delivered the *grantee in all cases* was that company (Rec. 171 and 195–6). Upon the right of way thus deeded secured or contracted for, the contractors for the railroad took possession and pushed actively the work of construction, as detailed in the testimony of Mr. Johnson (Rec. 97–190). Ties were delivered along the line and two miles of track were completed and certified to the trust company, and the fifty bonds and the shares of stock called for by the contract were duly certified and delivered by the trustee to the Empire Construction Company. Ordinances were passed by the city of Litchfield (Rec. 213) giving the railroad company the right to occupy streets and other municipal property of the city of Litchfield (Rec. 213–216).

The extent and value of the work of construction and the other property secured for the railroad at this time is illustrated by the valuation placed thereon through Mr. Olmstead, the engineer (see his testimony, Rec. 178–193)

in the spring of 1885, by the Empire Construction Company and the St. Louis & Chicago Ry. Co., and its contractors, in the Cooley conveyances already referred to. This valuation of the property of the Chicago, Springfield & St. Louis R. R., *north* of Litchfield, *based upon vouchers* for expenditures, is as follows (Rec. 125–6):

Expended for engineering	$4,672 95
Account right of way	4,685 40
Cross-ties	2,646 00
Construction, including excavations, embankments, trestle work, etc	72,134 22
Miscellaneous	16,872 56
Right of way guaranteed	19,000 00
Right of way contracted for	12,000 00
Special value Litchfield right of way	10,000 00
Total	$142,015 11

South of Litchfield.

For a distance of ten miles south of Litchfield, that is south of the Indianapolis & St. Louis tracks in Litchfield, the rights of way were secured by Mr. Southworth and by Mr. Keyser of Mount Olive (Rec., pp. 148–9 and 156–168) and the work of construction was not done in detached sections, as in the division north of Litchfield, but in a *substantially continuous line* the grading was completed from Litchfield some eight miles to Mount Olive. Some grading was done beyond that on the line toward Alhambra. As far as Mount Olive, the bridges and cattle guards were also built (Rec., p. 200). It appears that about all the work of construction on both divisions done under this Empire Construction Company in 1883 was performed by Mr. Johnson's firm, who finally secured payment by attaching the property of Mr. Wing's Milling Company (Rec., p. 207).

SUSPENSION OF CONSTRUCTION.

The work of construction was suspended some time in the summer or fall of 1883 and was not resumed until spring or summer of 1885. The contracts securing right of way for the railroad company remained in the possession of the construction company, *i. e.*, of Mr. Wing. As already stated, possession had been taken of the rights of way thus secured and it did not appear that any were re-entered by the grantors before the resumption of the work of construction.

RESUMPTION OF CONSTRUCTION — NORTH OF LITCHFIELD.

In spring of 1885, it seems to have been first proposed to continue the work of construction through the old organization. At a meeting of the board of directors of the Chicago, Springfield & St. Louis held April 29th, 1885 (Rec., p. 111), D. L. Wing, president of the Empire Construction Company, submitted a contract which was adopted by the board for the building of the railroad from Springfield through Litchfield to Alhambra, some 70 miles, Alhambra being about 17 miles beyond Mount Olive, the southern terminus of the previous construction (Rec., pp. 112–118). By this contract the former contract was annulled, and the bonds and stock referred to in this contract as being in the possession of the Empire Construction Company delivered to the construction company were to be delivered up for cancellation, and the *amount of expenditure of the construction company in construction under the old contract* was to be certified to the trustee, and eighty per cent of such amount was thereupon to be delivered in bonds of a new issue of $700,000.00, the old mortgage and bonds to be canceled.

At this point, the scheme to complete the road through new organizations, and the attempted ignoring of the rights of the holders of the outstanding bonds under the old mortgage, seems to have developed. On May 14th, 1885, D. L. Wing and others organized under general railroad law of Illinois the *St. Louis and Chicago Ry. Co.* to construct a railway between Litchfield and Springfield, and on May 26th, 1885, the Empire Construction Company notified the Chicago, Springfield & St. Louis R. R. Co., *that it desired to vacate and annul the contract* of April 29th, and this was promptly acceded to, (Rec., p. 120).

The testimony of Messrs. Beach & McLean, who were associated with Mr. Wing in the organization of this St. Louis & Chicago Ry. Co., and members of the first board of directors, the latter being secretary for some time, throws light upon this change of plans. Mr. Beach says (Rec., p. 133) that he became one of the incorporators at the solicitation of Mr. Wing, who said: "if we could change the name of the "road, he would go ahead and get the money and complete "the road; that he had the arragements all made; that was "the condition the thing was done under. It was to *build* "*the road* and that was the thing we were after and noth-"ing more." Also that the old road was supposed to follow it; "turned the old road over to the new company." Mr. Beach only remained a director during one meeting and then resigned (Rec., p. 136). He insisted upon the outstanding bonds being settled up. The question of turning over the property of the old company came up at the meeting, when he resigned. Mr. McLean, who was secretary, also resigned soon after both as secretary and director. He was present at the meeting before he resigned when the matter of the outstanding bonds was talked over (Rec., p. 144). The other members of the board were

anxious that the bonds should be returned. "The understanding was that Mr. Wing would produce them; that he "either had them or they were where he could get them. "The directors wanted them returned because they were "afraid they might have some legal effect, and they "were proposing to make a new contract." (Rec., p. 145.)

It will be noted that of the *five* incorporators and first board of directors, of the St. Louis & Chicago R. R. Co. *four* were members at the same time of the board of directors of the Chicago, Springfield & St. Louis R. R. Co. Both companies had the same offices, that is the new company succeeded the old in the office and in the possession of the papers. To carry out the scheme of completing under new organizations the incomplete work of the old company, the firm of H. H. Cooley & Co. was formed, ostensibly composed of H. H. Cooley and C. H. Wing, respectively the brother-in-law and brother of D. L. Wing (Rec., pp. 184 and 201). After D. L. Wing had thus reincorporated himself under the name of the St. Louis & Chicago Ry. Co. he then undertook under the name of the Empire Construction Company, of which organization he was president and holder of all the stock, to turn over the partially constructed railroad of the Chicago, Springfield & St. Louis R. R. Co. as a basis of capitalization and bonding of the new organization. This was done through the device of conveying the unfinished road, and all the assets and property rights connected therewith, from the Empire Construction Company to H. H. Cooley & Co. and then from Cooley & Co. to the St. Louis & Chicago Ry. Co. by the conveyances hereafter referred to.

Before making these conveyances, Mr. Olmstead, the engineer, was employed to examine the receipts and vouchers and other evidences of value and to make up therefrom a valuation of all this property (*supra*, p. 15) (Rec., pp.

178–193). By these instruments (Rec., pp. 125–129)* "The Empire Construction Company by D. L. Wing, President," in consideration of the sum of $142,015.11 paid by H. H. Cooley & Co. conveyed to H. H. Cooley & Co., and by an instrument of same date, H. H. Cooley & Co. conveyed to the St. Louis & Chicago Ry. Co. property described as follows:

(The description is here given, as set forth in each deed — italics being ours.)

All right of way acquired by the Empire Construction Company *for the Chicago, Springfield and St. Louis Railroad Company* between Litchfield, Ills., and Springfield, Ills., estimated, as per vouchers, to be of the value of forty-seven hundred eighty-five and $\frac{40}{100}$ ($4,785.40) dollars; all cross-ties between Litchfield, Ills., and Springfield, Ills., on the side of survey made *for the Chicago, Springfield and St. Louis Railroad Company*, estimated to be of the value of twenty-five hundred and forty-six ($2,546.00) dollars, as per vouchers; all embankments, excavations, trestle-work, tiling, and all other work done in the building and construction of a railroad on the line of survey between Litchfield, Ills., and Springfield, Ills., done and constructed by the Empire Construction Company, estimated to be of the value of and cost, as per vouchers, *at* seventy-two thousand

* There is an obvious clerical error in the printed record (Rec., p. 124–129) in the recital of the order of introduction of these Cooley conveyances in evidence. The corrected order is as follows: Exhibit 6, Empire Construction Co. to H. H. Cooley & Co. (property *north* of Litchfield), Exhibit 7, H. H. Cooley & Co. to St. Louis & Chicago Ry. Co. (same property). Exhibits 6 and 7 appear *in extenso* (Rec., pages 125–129). Exhibit 8, Empire Construction Co. to H. H. Cooley & Co., property *south* of Litchfield (Rec., pp. 125–129), and Exhibit 9, H. H. Cooley & Co. to Litchfield & St. Louis Ry. Co., same property (Rec., pp. 125–129). Exhibits 8 and 9 through a clerical omission are not printed *in extenso* in the record, but the material portions are recited in the decree (Rec. pp. 239, 240).

one hundred and thirty-four and $\frac{22}{100}$ ($72,134.22) dollars, all contracts for right of way guaranteed the Empire Construction Company *for the Chicago, Springfield & St. Louis Railroad Company*, estimated, as per vouchers or exhibits,— nineteen thousand ($19,000) dollars; all right of way contracted for *for the Chicago, Springfield and St. Louis Railroad Company* by the Empire Construction Company, estimated, as per vouchers, statements, or exhibits, at twelve thousand ($12,000.00) dollars; all the right of way in Litchfield acquired by the Empire Construction Company *for the right of way of the Chicago, Springfield and St. Louis Railroad Company*, estimated as of value of ten thousand ($10,000.00) dollars; all engineering services and engineering in tile construction, location, surveys, and estimates and superintendence of construction in the work done between Litchfield, Ills., and Springfield, Ills., as per vouchers, forty-six hundred seventy-two & $\frac{93}{100}$ ($4,672.93) dollars; all estimates, rights and advantages accrued to the Empire Construction Company by reason of any contract heretofore existing and all rights in the Empire Construction Company resulting from work done, material furnished, money expended, and included in the term miscellaneous, as per vouchers, sixteen thousand eight hundred and seventy-six and $\frac{56}{100}$ ($16,876.56) dollars; all surveys, contracts, profiles, books and all property belonging to the Empire Construction Company except that of like nature as above enumerated on the line of the Chicago, Springfield and St. Louis Railroad Company south of the line of Indianapolis and St. Louis Railroad Company.

These instruments, each containing the recital that the property therein purporting to be conveyed had been acquired by the Empire Construction Co. *for the Chicago, Springfield & St. Louis R. R. Co.* were *recorded* in the recorder's office of Montgomery County on *May 27th, 1885*, and in the counties of Sangamon, Macoupin, Madison & St. Clair shortly thereafter.

After these instruments were thus recorded, the St. Louis & Chicago R. R. Co. executed and recorded the

mortgage securing $500,000.00 of bonds, to the Mercantile Trust Company of New York.

The work of completing the unfinished railroad of the Chicago, Springfield & St. Louis R. R. Co. was then continued by Mr. Wing under his new corporate disguise acting through the ostensible partnership of his brother and brother-in-law as H. H. Cooley & Co. It happened that the actual work of construction was done by the same subcontractor, Mr. Johnson, who had done the work of construction under the Empire Construction Company in 1883. His testimony (Rec., pp. 193 and 211, 212) closed all discussion upon the only issue made by the pleadings. His testimony is explicit that the line of road built by him for the St. Louis & Chicago Ry. for 18 miles north of Litchfield, through North Litchfield, Zanesville and Pitmann townships, was *on the same road-bed as the old road*. Not only was the old work used by him, but his *contract with Cooley & Co. expressly provided that it should be so used*. That is that "*the road should be built upon* "*the line as partially built by the Empire Construction* "*Company, as near as practicable.*" (Rec., p. 203.)

Upon this phase of the case, the decree of the court finds (Rec., p. 239) "that the said St. Louis & Chicago Ry. "Co. *took possession of said uncompleted line* of railroad "conveyed by the Empire Construction Company after the "delivery of the conveyance of H. H. Cooley & Co., and "*mingled other work and materials therewith and com-* "*pleted its said railroad*, in 1886 from Litchfield to "Springfield."

COMPLETION — SOUTH OF LITCHFIELD.

This division of the road differs from the other in that the question of notice to subsequent lien claimants or subsequent incumbrancers, is not involved. Wing organized

the Litchfield and St. Louis Ry. Co., on May 28, 1886, to construct a railway from Litchfield to Alhambra, and caused the unfinished road of the Chicago, Springfield & St. Louis R. R. Co. to be conveyed through H. H. Cooley & Co. to the new company in the same manner as in the case of the northern branch above set forth. The deeds contained the same recitals that the property conveyed had been acquired by the Empire Construction Co. *for the Chicago, Springfield & St. Louis R. R. Co.* and were duly recorded, but as no question of notice to subsequent incumbrancers of record is involved as to this branch, the deed of trust to the Central Trust Company, mentioned in the bill having been released of record subsequently to the filing of this bill, (*infra*, p. 24) it is unnecessary to do more than state the finding of the court in its decree (Rec. 239):

That on the 12th day of June, A. D. 1886, the Empire Construction Company conveyed to H. H. Cooley and Company, for the consideration of $5,000, all the real estate and personal property, rights, credits, and easements acquired by the Empire Construction Company for the Chicago, Springfield & St. Louis Railroad Company south of the Indianapolis and St. Louis railway, and between Litchfield, Illinois and Alhambra, Illinois, on the line of survey made for the Chicago, Springfield & St. Louis Railroad Company and all embankments, excavations, trestlework, and all other work done in the building and construction of a railroad on the line of survey between Litchfield and Alhambra; that on the same date, June 12, 1886, the said H. H. Cooley and Company, for the expressed consideration of $75,000, conveyed the same property and rights under the same description to the Litchfield & St. Louis Railway Company; that said Litchfield & St. Louis Railway Company took *possession of the said uncompleted line of railroad and mingled other work and material therewith and upon a survey made and in accordance with plats and profiles thereto made for the Chicago, Springfield*

& St. Louis Railroad Company did *complete* a line of railroad from Litchfield to Mt. Olive, Illinois, and *did also appropriate the rights acquired by and for the Chicago, Springfield & St. Louis* Railroad Company between Mt. Olive and Alhambra, Illinois.

As to this branch of the road there is no question whatever that the line of completed road is the *same line* commenced and partially completed by the Empire Construction Company in 1883 for The Chicago, Springfield & St. Louis R. R. Co. (Rec. pp. 136, 191, 213).

It was established by the testimony that the present completed railroad south of Litchfield, from Litchfield to Mount Olive known at the time of the filing of the bill as the Litchfield and St. L. Ry. Co., and the line north of Litchfield for 18 miles nearly to the Sangamon County line is simply the same road, left unfinished by the Empire Construction Company in 1883. North of this northern limit, *i. e.*, eighteen miles north of Litchfield, there is an admitted divergence in the route of the new road, that is to say, the new road runs on a straight line directly north to Springfield, while the old road made a divergence to the northeast of a few miles, having same northern terminus at Springfield, but both roads form part of the connection between original termini, Springfield and East St. Louis (Rec., p. 202).

DEFENDANT'S TESTIMONY.

The only testimony offered on the part of defendants was that of D. L. Wing himself. (Rec., pp. 218–231). So far as his testimony was relevant to the issues made by the pleadings, it corroborated the other testimony in the case. He testified that the track in the city of Litchfield, which had been graded, tied and ironed, and certified to the trustee for issue of bonds, was subsequently torn

up by certain parties and the rails removed, and a new track afterward laid by the St. Louis & Chicago Ry. Co. In addition, against the objection of complainants that such testimony was irrelevant to the issues made by the pleadings, he gave testimony concerning the negotiation of the fifty bonds sued upon; that they were originally delivered to one R. B. Wade, of whom the complainants were the testamentary trustees, and that they were originally deposited as collateral security with Wade, by him on account of an indorsement made by Wade for Wing's accommodation. The agreement of pledge between the parties was put in evidence against the complainants' objection (Rec., pp. 232–234) showing that Wade was given an option of taking an interest in the construction contract of the Empire Construction Company, or in event of his failure to exercise such option, Wing was to pay the note, and in default thereof, the securities, including the bonds in question, were to be sold without notice, Wade to have the same power of purchase at such sale as any other person. Mr. Wade died shortly after the execution of this agreement, the option was never exercised, and the bonds were sold at public sale, and bought in by complainants for the sum of $20,000.00 prior to the filing of this bill, and it was also admitted by complainant to save the taking of proof though objecting to the relevancy of the testimony under the pleadings or its materiality in the case, that the balance of the indebtedness due by Mr. Wing had been collected from him by process of law. At the hearing the objection to this testimony was renewed, but the same was received by the court.

At the hearing of the case before Judge Gresham on June 9th, 1889, it was admitted by the defendants that the mortgage of the portion of the line south of Litchfield (by the Litchfield & St. Louis Ry. Co.), to the Central Trust Company (Rec., p. 27) had been released of record.

The court admitted all the evidence of Wing, overruling complainants' objection of irrelevancy under the pleadings, and orally announced its decision, limiting complainants' recovery to the sum of $20,000.00, on the ground that that was the amount according to Wing's testimony, which had been originally paid for the bonds.

Complainants thereupon, on the same day (Rec., p. 241–244), filed their written protest and demand for rehearing, alleging that they had been surprised by the court's admitting and deciding the case upon testimony which had no warrant in the pleadings, and that upon the imputation of laches orally made by the court as a basis of its finding, they insisted that they had had no day in court, and they offered to prove whenever such issue was properly made in the pleadings, that they so far from being guilty of laches, had used all possible diligence in unearthing the fraud and in notifying and warning all parties whom they could learn were negotiating the new issue of bonds, of the extent of their claims (Rec., pp. 242–243).

This motion was overruled, and all offer of further testimony as set out in the motion denied (Rec., p. 244), and final decree was thereafter entered on August 5th, 1889 (Rec., p. 235), finding the facts as to complainants' mortgage, and the completion of the mortgaged road by the new companies as above set forth, but *dismissing the bill entirely* as to the St. Louis & Chicago Ry. Co. and the Mercantile Trust Company (*i. e.*, as to the line *north* of Litchfield), and *limiting* the recovery on the line *south* of Litchfield to the sum of $20,000.00.

Prior to entry of decree, but after the decision, the American Loan and Trust Company filed its application to be permitted to intervene, on the ground as set forth in its application (Rec., p. 44), that since the filing of the suit, through mortgage executed by the defendant, the St. Louis & Chicago R. R. Co., it had acquired an interest in the

property, south of Litchfield, on which the court had awarded a lien to complainants. The mortgage is not in the record, is not referred to in the decree, and does not appear to have been put in evidence, and there is nothing in the record to show what were its terms, or what was interest of the cross-appellant in the property, except in the allegation of the petition to be made party above referred to. The court permitted the company (Rec., p. 46) to be made party and to appeal, on their "adopting and accepting" the answer theretofore filed by the mortgagor, the Chicago, Springfield & St. Louis R. R. Co., and further provided that it should not be necessary to retake any evidence in the cause.

Cross-appeals were taken by complainants and the American Loan & Trust Company. The latter corporation having been dissolved, pending the appeal, by order of this court on January —, 1893, Dallas B. Pratt, designated as successor in the trust of the mortgage, was entered as party to the cause in its stead.

The assignment of errors filed by complainants is as follows: (Rec., p. 247) —

ASSIGNMENT OF ERRORS.

1. The court erred in dismissing complainants' bill as to The Mercantile Trust Company.

2. The court erred in dismissing complainants' bill as to The St. Louis & Chicago Ry. Co.

3. The court erred in denying complainants a lien upon the line north of Litchfield.

4. The court erred in failing to decree the payment of the full amount due on the fifty bonds held by complainants.

5. The court erred in failing to decree the full payment of the fifty bonds held by complainants together with interest thereon and in denying complainants a prior lien for said amount upon the entire line specified in their bill.

6. The court erred in denying complainants motion for a rehearing.

7. The court erred in denying complainants the entire relief prayed for in their bill.

2 Morawetz on Corp., Sec. 812;
Blair *v.* St. L., H. & K. R. R., 22 Fed. 36;
Hibernia Ins. Co. *v.* St. L. & N. O. Trans. Co., 10 Fed. Rep. 596; 13 Fed. Rep. 516;
R. R. Co. *v.* Bee, 48 Cal. 398.

5. The lien of complainants' mortgage extended not only over the 28 miles of road, *i. e.*, from Mount Olive to a point 18 miles north of Litchfield, admitted to have been in actual process of construction and partly completed, when the work of construction was resumed under the new corporate organization in 1885, but over the *entire line of railroad* completed under the two new corporate organizations between the original termini.

Meyer *v.* Johnston, 53 Ala. 278; *s. c.* 64 Ala. 605;
Pierce *v.* Emery, 32 N. H. 519;
Elwell *v.* R. R. Co., 67 Barb. 83;
Jones on Corp. Bonds & Mortgages. Secs. 7 1and 101;
Seymour *v.* R. R. Co., 25 Barb. 288.

6. The decree should be reversed with directions to enter a decree establishing complainants' lien for the full amount due on their bonds upon the entire line of railway constructed between the original termini by either the original mortgagor or its successors, prior to the mortgage of the Mercantile Trust Company or the American Loan & Trust Company, upon the admitted facts of the case, even including the testimony admitted on behalf of defendants which had no warrant under the pleadings, and as to which complainants had no day in court.

7. The decree, in so far as it is adverse to complainants, is erroneous upon its face, in that it is inconsistent with its own findings of fact.

ARGUMENT.

I.

The decree does not conform to the allegations of the pleadings, and complainants had no day in court upon the matters decided adversely to them therein, and the decree is therefore erroneous as to them irrespective of any other questions involved.

This proposition is too plain for discussion. Even if the question of the amount paid by complainants, the admitted holders of the bonds, or their decedent, for their holdings *could* have been made a material issue in the case by *any* pleading, no such issue was in fact made. The testimony thereon was admitted against complainants' objection who in vain objected to the injection into the case of issues not made by the pleadings, and in vain demanded an opportunity to have a day in court upon such matters, if deemed material.

In Crocket *v.* Lee, 7 Wheat. 527, this court, though stating that it was inclined to the opinion that the decree of the court below on the merits was right, yet, as the point on which the case was decided was *not properly made by the pleadings*, the decree was reversed and the case remanded on that ground alone with directions to permit the parties to amend their pleadings. Chief Justice Marshall in the opinion of the court saying:

"The principle advanced by appellants counsel cannot be "controverted. No rule is better settled than that the "decree must conform to the allegations as well as the "proofs in the case. * * * If the pleadings in the "case were to give no notice to the parties or to the court

2 Morawetz on Corp., Sec. 812;
Blair *v.* St. L., H. & K. R. R., 22 Fed. 36;
Hibernia Ins. Co. *v.* St. L. & N. O. Trans. Co., 10 Fed. Rep. 596; 13 Fed. Rep. 516;
R. R. Co. *v.* Bee, 48 Cal. 398.

5. The lien of complainants' mortgage extended not only over the 28 miles of road, *i. e.*, from Mount Olive to a point 18 miles north of Litchfield, admitted to have been in actual process of construction and partly completed, when the work of construction was resumed under the new corporate organization in 1885, but over the *entire line of railroad* completed under the two new corporate organizations between the original termini.

Meyer *v.* Johnston, 53 Ala. 278; *s. c.* 64 Ala. 605;
Pierce *v.* Emery, 32 N. H. 519;
Elwell *v.* R. R. Co., 67 Barb. 83;
Jones on Corp. Bonds & Mortgages. Secs. 7 1and 101;
Seymour *v.* R. R. Co., 25 Barb. 288.

6. The decree should be reversed with directions to enter a decree establishing complainants' lien for the full amount due on their bonds upon the entire line of railway constructed between the original termini by either the original mortgagor or its successors, prior to the mortgage of the Mercantile Trust Company or the American Loan & Trust Company, upon the admitted facts of the case, even including the testimony admitted on behalf of defendants which had no warrant under the pleadings, and as to which complainants had no day in court.

7. The decree, in so far as it is adverse to complainants, is erroneous upon its face, in that it is inconsistent with its own findings of fact.

ARGUMENT.

I.

The decree does not conform to the allegations of the pleadings, and complainants had no day in court upon the matters decided adversely to them therein, and the decree is therefore erroneous as to them irrespective of any other questions involved.

This proposition is too plain for discussion. Even if the question of the amount paid by complainants, the admitted holders of the bonds, or their decedent, for their holdings *could* have been made a material issue in the case by *any* pleading, no such issue was in fact made. The testimony thereon was admitted against complainants' objection who in vain objected to the injection into the case of issues not made by the pleadings, and in vain demanded an opportunity to have a day in court upon such matters, if deemed material.

In Crocket *v.* Lee, 7 Wheat. 527, this court, though stating that it was inclined to the opinion that the decree of the court below on the merits was right, yet, as the point on which the case was decided was *not properly made by the pleadings*, the decree was reversed and the case remanded on that ground alone with directions to permit the parties to amend their pleadings. Chief Justice Marshall in the opinion of the court saying:

"The principle advanced by appellants counsel cannot be "controverted. No rule is better settled than that the "decree must conform to the allegations as well as the "proofs in the case. * * * If the pleadings in the "case were to give no notice to the parties or to the court

"of the material facts upon which the right asserted was "to depend, no notice of the points to which the testi- "mony was to be directed and to which it was to be limited, "if a new case might be made out in the proof differing "from that stated in the pleadings, all will perceive the "confusion and uncertainty which would attend legal pro- "ceedings and the injustice which must frequently take "place. The rule that the decree must conform to the "allegations as well as to the proofs of the parties is not "only one which justice requires, but one which necessity "imposes on courts. We cannot dispense with it in this "case."

But while complainants are thus entitled to a reversal of the decree on this ground alone, they do not stop here, but they insist that, upon the undisputed facts disclosed by the record under the issues made by the pleadings, they are entitled in this court to a decree or to a reversal of the case with directions to the lower court to enter the decree which the court below ought to have rendered upon the pleadings and proofs. And complainants will further insist that aside from any objections based upon the state of the pleadings and giving due consideration to *all* the testimony offered in the case, complainants were entitled to all the relief prayed for in the bill.

II.

Upon the merits of the case, even assuming the St. Louis & Chicago, and the Litchfield & St. Louis Railway companies to have been bona fide transferees for value of the railroad partially constructed for the Chicago, Springfield & St. Louis R. R. Co., the lien of complainants' mortgage attached to all said partially constructed railroad with all the accessions made thereon by the new

companies in completing the same, prior in right to any subsequent incumbrancers with notice.

Upon this theory of the case which treats the St. Louis & Chicago and the Litchfield & St. Louis Ry. companies as *bona fide* transferees or purchasers of the property, there is no question that the new line of road from Mount Olive north through Litchfield to a point 18 miles north of Litchfield and running through the streets of the city of Litchfield is the *identical road-bed* acquired and partially constructed for the mortgagor and covered by the lien of complainants' mortgage. The testimony of Mr. Johnson the contractor who did the actual work of construction under both the old and the new companies is conclusive upon this point. As to the line north of Litchfield, it appears that he not only *did* the work on the old bed, but he specifically *contracted* with the new company to do so. The recitals in the two conveyances under which the two new companies derived what color of title they had to the property of the old company, which recitals are clearly binding upon the new companies and those claiming under them, fixes the aggregate value of such property at over $200,000.00. It is specifically found in the decree of the Circuit Court that each of these new companies "*took possession of the uncompleted line of road and mingled other material and work therewith*" and so completed the road.

We have thus the common case of the acquisition by purchase or otherwise of mortgaged property and the making of subsequent accessions thereto. The lien continues upon the property *and* its accessions until satisfied. We are aware of no principle of law which excepts railroad property from the application of these rules.

The defense outlined in the answers of the railroad companies and sought to be sustained by the testimony of Mr.

Wing appears to have been substantially this, that the lien of complainants' mortgage attached only to the two miles certified to the trustee as having been completed, upon which the $50,000.00 of bonds were issued by the trustee, and that this lien was subsequently lost by the alleged tearing up of this track on the streets of Litchfield and that the lien of the mortgage did not extend to any of the property along the twenty-eight miles of graded railroad admitted to have been acquired for the railroad company and in its name by its contractor, the Empire Construction Company.

It will be observed, that this was the only distinct issue made by the defendants in their pleadings and it is clearly untenable under the repeated decisions of this court: indeed, the court below did not base its decree upon it, but as said before went outside of the pleadings altogether. This court has had repeated occasion of late years to consider the effect of a mortgage by a railroad company covering its future acquired property.

In Dunham *v.* R. R. Co., 1 Wall. 254, the court held that the mortgage by a railroad company of its road "built and to be built," the company at date of the mortgage having built part of the road but not having built the residue, has precedence, *even as regards the unbuilt part*, of the claim of the contractor who in the inability of the company to finish the road, had himself finished it under an agreement that he should retain possession of the road and apply its earnings to the liquidation of the debt due him, and who had never surrendered possession of the road to the company.

In Galveston R. R. *v.* Cowdrey, 11 Wall. 459, it was contended by a party who supplied the iron for a part of the road, that when the mortgages were executed, that part of the road was not in existence and could not have been conveyed thereby and could only be embraced therein on the principle of equitable estoppel, which is rebutted when it comes

in conflict with a superior equity — but it was said by the court that the mortgages estopped the company and all parties claiming under it, and prevented it from asserting that these deeds did not cover all the property and rights which they professed to cover. "Had there been but one "deed of trust," said the court, "and had that been given "before a single shovel had been put into the ground to- "ward constructing the railroad, yet if it assumed to con- "vey and mortgage the railroad which the company was "authorized by law to build together with its superstruc- "ture, appurtenances, fixtures and rolling stock, these "several items of property as they came into existence "would become instantly attached to and covered by the "deed, and would have fed the estoppel created thereby. "No other rational or equitable rule can be adopted for "such cases. To hold otherwise would render it necessary "for a railroad company to borrow money in small parcels "as sections of the road were completed and trust deeds "could be safely given thereon. The practice of the coun- "try and its necessities are coincident with the rule."

Both the above cases were cited approvingly by this court in Porter *v.* Bessemer Steel Co., 122 U. S. 267, on rehearing (the original decision being reported in 120 U. S. 649), holding that *rails* and other articles which became fixed to and part of a railroad covered by a prior mortgage will be held as against any contract between the party furnishing the same and the company, containing the stipulation that the title should not pass until paid for, and reserving to the vendor the right to remove.

The same doctrine is re-affirmed in Toledo &c. R. R. Co. *v.* Hamilton, 134 U. S. 296, and in Central Trust Co. *v.* Kneeland, 138 U. S. 414. So clearly is this doctrine settled by the decisions of this court that it is needless to dwell upon the decisions of other courts which are referred to in the brief.

It certainly does not lie in the mouth of any of these defendants to complain that these contracts for right of way securing rights of way were not produced in evidence. Complainants did everything in their power to enforce their production by calling on defendants, the St. Louis & Chicago Ry. Co. and the Litchfield & St. Louis Ry. Co., into whose possession they had been traced (Rec. 178, 179–183) to produce them (Rec. 122 and 217). Mr. Olmstead the engineer, employed at the time of the re-incorporation of Mr. Wing and his associates, testified that these contracts and deeds for right of way were placed in his hands for valuation. Defendants professing to be unable to produce the original contracts, which were proven to have gone into their possession, complainants proved the substance of their contents. The testimony of all the witnesses (see testimony of Mr. Southworth, Mr. Johnson and Mr. Olmstead) agrees that they were *all made in favor of or for the benefit of the Chicago, Springfield & St. Louis R. R. Co.* Certain it is that the railroad company through its contractors took possession of all the property included in such contracts and deeds.

It was in the power of defendants to prove just what became of these papers after they passed into their control. Under the circumstances of the case every presumption is against them.

It is wholly immaterial that these contracts were not recorded. There is no testimony that any of this property was ever re-entered by the grantors or contractors, after possession had been taken by or for the railroad company.

It is also immaterial, whether the rights acquired for the railroad company included the legal title, or were merely inchoate equities, the lien of the mortgage attached to the property rights whatever they were, *legal or equitable.* This is expressly decided by this court in Central Trust Co

v. Kneeland, 138 U. S. 414. In the language of the Supreme Court of Maine in Hamlin *v.* European & N. A. C., 72 Me. 83: "the mortgage to the complainants in equity "as trustees, operated upon the inchoate right of the com- "pany to the conveyance under the contracts as soon as "they were executed, and the company was in possession "under them for the purposes of the charter. Their rights "to the conveyances became at once subject in equity to "the mortgage."

Furthermore the new railway companies and those claiming under them with notice are clearly *estopped* from denying that property acquired for the Chicago, Springfield & St. Louis R. R. Co. and therefore subject to the lien of its mortgage, was transfered to them under the Cooley Conveyances, including rights of way, and contracts for rights of way of the aggregate value stated therein. This point is apart from the question of the effect of these conveyances, as giving *notice* to the subsequent mortgagees of the complainants' paramount title.

The conveyances from the Empire Construction Co. expressly assign to Cooley & Co. all rights of way, contracts for rights of way, road-bed, maps, profiles, and all other property as well as the muniments of title therefor, acquired by the Construction Co. for *the Chicago, Springfield & St. Louis R. R. Co.* and thereafter the two new companies expressly contracted with Johnson to complete the construction upon the *same line*, and according to the testimony of Johnson and Southworth, the work done for the new lines was in point of fact upon the right of way, thus acquired or contracted for and partly constructed, and as originally surveyed for the plaintiffs' mortgagor. The identity of the property is therefore established, not only by the proof, but by the express admission of the new companies and those claiming under them, in their own recorded title, under which they claim.

Right of Way through City of Litchfield

may be briefly noticed. It appears from the ordinance of March 7th, 1885 (Rec., p. 216) enacted at the time when the work of resumption was contemplated through the old organization, continued to the railroad company, *i. e.*, the Chicago, Springfield & St. Louis R. R. Co., the privilege of occupying certain streets for ten months after that date. No evidence was offered that this franchise was ever revoked by the corporate authorities or that the successor companies operated in the streets under any other charter authority. This franchise right under the city of Litchfield was valued by Mr. Osborn (Rec., p. 182) as set forth in the Cooley Conveyances at $10,000.00 (Rec., p. 128). The subsequent alleged tearing up of the rails by "sundry evil disposed persons" becomes wholly immaterial. Whenever the new rails were laid, whether then or subsequently, by the original mortgagor or any one else, the rails became *part of the railroad* and bound by the lien of the original mortgage.

III.

Both of the defendant appellants, the American Loan & Trust Company and its successor, Dallas B. Pratt, and the Mercantile Trust Company, hold subject to the prior lien of complainants' mortgage, the first named having acquired its rights *pendente lite* after filing of complainants bill, and the last named being chargeable with *express notice* of complainants' rights through the recitals of the Cooley conveyances recorded prior to the execution of their mortgage.

Still assuming for the purposes of argument, that the new railroad companies stand in the position of *bona fide* trans-

ferees or purchasers for value, and that notice of complainants' prior title is necessary to charge a subsequent incumberancer, we take up the case of the two companies, that is the lines *north* and *south* of Litchfield, separately.

First as to the line *south* of Litchfield, *i. e.*, that completed by the Litchfield & St. Louis Ry. Co. Here there was admittedly at the time of hearing and of entering the decree, *no subsequent incumbrancer* who required any notice. The mortgage to the Central Trust Company which was set out in the bill, was admittedly released after the filing of the bill; and the new mortgage issued to the American Loan & Trust Company, which covered the entire line of road both north and south of Litchfield, but north of Litchfield being subject to the prior lien of the Mercantile Trust Company, was executed after the bill in this cause was filed. As to the road south of Litchfield, therefore, the American Loan & Trust Company and Mr. Pratt its successor, holds the position of purchaser or incumbrancer *pendente lite* and subject to all the rights and claims set forth in complainants' bill. As will be seen from the order admitting the American Loan & Trust Company to appear and appeal the case, it did so upon the express condition which it accepted, of adopting and accepting the answer of the Chicago, Springfield & St. Louis R. R. Co. It therefore stands precisely in the shoes of that company, *i. e.*, the original mortgagor, and neither it nor its successor Mr. Pratt will be permitted in this court to assert any claim, which could not have been made by the original mortgagor.

As to *second*, the line *north of Litchfield* covered by the mortgage of the Mercantile Trust Company. As already seen this mortgage issued by the St. Louis & Chicago Ry. Co. to secure $500,000.00 of bonds purported to cover only the road between Litchfield and Springfield. Eighteen miles of this road from Litchfield north, including the portion through the street of Litchfield, were admittedly

partially constructed for the Chicago, Springfield and St. Louis R. R. Co. The only color or pretense of title which the St. Louis & Chicago Ry. Co. and under it the Mercantile Trust Company held to this property, which admittedly was occupied and completed by the "*mingling of other* "*property therewith* by the new company" (see finding of the decree) is through the so-called Cooley conveyances. These were the conveyances by which the Empire Construction Company, the contractor for the Chicago, Springfield & St. Louis R. R. Co., undertook to convey to H. H. Cooley & Co., the contractor for the St. Louis & Chicago Ry. Co. and H. H. Cooley & Co. to the St. Louis & Chicago Ry. Co., this incomplete line of railroad. These conveyances recite in express terms that the property conveyed thereby was the property acquired by the Empire Construction Company *for the Chicago, Springfield & St. Louis R. R. Co.* (see exhibit 7, Rec., p. 128). The deed from H. H. Cooley & Co. to the St. Louis & Chicago Ry., recites that in consideration of one dollar in hand paid and in consideration of the contract that it had entered into with the St. Louis & Chicago Ry. Co., H. H. Cooley & Co. conveyed to them all property, to wit, right of way, contracts for right of way, contracts of right of way guaranteed, grading, ties, franchises acquired *for the Chicago, Springfield & St. Louis R. R. Co.*, by the Empire Construction Company, each class of property being specifically valued, the aggregate valuation being over $142,000.00. This deed was recorded in Montgomery County on June 1, 1885 (Rec., p. 129). The mortgage of the Mercantile Trust Company was not executed until July 1, 1885.

It is familiar law that wherever a purchaser holds under a conveyance, that he has constructive notice of every matter connected with or affecting the estate which appears either by description of parties, by recital, by reference or otherwise on the face of any deed which forms an essential

link in the chain of instruments through which he must derive his title.

2 Pom. Eq. Jur., Sec. 626;
Joy *v.* St. Louis, 138 U. S. 1.

This notice is equally binding upon the trust companies and on the holders of the bonds secured by the mortgage.

There is therefore no difference, so far as complainants' right to their paramount lien is concerned, between the lines north and south of Litchfield. *Both* were subject to the mortgage, in *both* cases the unfinished line of the old road was finished with accessions thereto by the respective new companies, in the line south of Litchfield there was no subsequent incumbrance except *pendente lite*, and as to the incumbrance north, express notice was proved.

The distinction made by the court below between the two divisions of the road in confining complainants' lien to the southern line was wholly unwarranted and erroneous. Complainants' right was paramount as to both divisions of the road over both the new companies, and over both the mortgagees claiming under them. Even if either of these subsequent incumbrancers could assert equities as against the other, as to the order in which they should severally contribute to the satisfaction of the prior mortgage lien, no such equity can impair or abridge the paramount right of the first mortgagee to hold his lien over the entire property until his claim is satisfied.

IV.

The defendants, the new railway companies, were, in no sense, purchasers for value of the incomplete railroad of the Chicago, Springfield & St. Louis R. R. Co.,

but were in law the successors of that corporation, cum onere, and the mortgage lien upon its franchises and after-acquired property, securing complainants' bonds, attached to all the property said successor corporations acquired in completing the road between the original termini, prior in right to all parties claiming under said last named successor corporations.

The case has thus far been considered upon the assumption that the St. Louis & Chicago Ry. Co. and the Litchfield & St. Louis Ry. Co. were *bona fide* transferees or purchasers for value of the railroad property, which was subject to the lien of complainants' mortgage, and it is submitted, that complainants' rights are clear against both these corporations, and the subsequent mortgagees upon both sections of the line.

But the assumption thus made is unwarranted and untrue in point of fact. The new companies were *not* purchasers for value in any sense. There was no pretense even of assuming a garb of legality of color of title in the transaction. It is not necessary to consider whether there was *any* legal way for such transfer of the assets of the old corporation to be made, for there was in fact none made, attempted or pretended to be made. The only conveyances even purporting to give title to the new companies were those executed by the *Empire Construction Company*, the contractor of the old company, which through Cooley & Co. the contractor for the new companies, undertook to transfer to the latter the property acquired for the old company, and as we have seen with express notice of the old company's rights.

A court of equity will look behind these cloaks of corporate organizations, which are readily assumed under the general corporation laws of Illinois, and grasp the real nature of the transactions, which are now the subject of

judicial investigation. In the language of the court in Hibernia Ins. Co. *v.* St. Louis & New Orleans T. Co., 13 Fed. Rep. 520: "It is the duty of the court to examine "the whole transaction and to cut through mere paper "transfers designed to obstruct or destroy the rights of "parties. The evidence sufficiently discloses that the new "corporation was a mere continuance of the old with sub- "stantially the same parties in interest, — a mere change "of name. * * * This is a proceeding in equity "wherein mere colorable pretenses are to be disregarded. "Shifting of corporate names cannot defeat positive rights "any more than a change of the name of a natural person "can absolve him from his obligations."

In the spring of 1885, before these new corporations came into existence, D. L. Wing owned substantially all the stock of the Empire Construction Co. and thus owned and controlled practically all the stock of the Chicago, Springfield & St. Louis R. R. Co. The railway company possessed the chartered right, which it had mortgaged, to construct a railroad from East St. Louis through Litchfield to Springfield. Through representations that if the name of the road was changed he would go ahead and get money and complete the road, he induced his associates who were maintaining the old organization for him, to organize the St. Louis & Chicago for the purpose of completing the road over part of the route between the original termini, *i. e.*, from Litchfield to Springfield. The Litchfield & St. Louis Ry. Co. was subsequently organized in the same manner to complete the road over another part of the original road and as was admitted at the hearing, was afterwards pending this suit consolidated with the St. Louis & Chicago Ry. Co. The new company or companies succeeded the old in the same offices, took possession of their contracts and rights of way and incomplete railroad, in short, as expressed by Mr. Beach, one of the organizers of the St. Louis

& Chicago Ry. Co., that (the old road) "was supposed to follow it." It is needless to comment in detail upon the testimony, as there is no dispute about it.

Under these facts the law is well settled that even where there is a formal *legal* transfer of the assets of the old corporation to the new, the latter takes them *cum onere*, that is, charged with the obligation, certainly to the extent of the assets received, of discharging the debts of the old corporation.

2 Morawetz on Corp. 791.

In such case the burden of showing that the transfer was made in good faith for value falls upon those asserting its validity against unpaid creditors.

Hibernia Ins. Co. *v.* St. Louis & N. O. T. Co., 10 Fed. 596; *s. c.* 13 Fed. Rep. 516;
Blair *v.* St. Louis H. & K. R. R., 22 Fed. Rep. 36;
San Francisco &c. R. R. *v.* Bee, 48 Cal. 398.

The successive railroad organizations in this case were simply the forms through which Wing was enabled at these different periods to build a railroad in the common way with the proceeds of mortgage bonds. As is usually the case in western railroad building, the railroad corporate organization was a mere shell.

For the purposes of this case it is perhaps conceding too much to call the new corporations *successors* of com plainants' mortgagor, as between themselves and the State, they were in fact distinct legal entities, new corporations, but in determining *complainants'* rights as against *them*, and especially in fixing the property subject to the lien of complainants' mortgage, they are in legal contemplation the *same* corporation as the Chicago, Springfield

& St. Louis R. R. Co., owned by the same parties in interest organized for the identical purposes, taking possession of all the property of the old corporation, without paying one dollar therefor to it, or its stockholders, using the same as a basis for their capitalization, and all this without even the pretense of a legal transfer of assets, to say nothing of providing for the liabilities, such change of corporate organization, certainly in view of a court of equity, is simply a *change of name*.

The only change in this case was in the *continuity* of *corporate* organization, just as this court remarked in Comanche County *v.* Lewis, 133 U. S. 188, that the only change there was in the "continuity of *political* organization."

In line with the case last cited are other adjudications of this court applying this doctrine to other cases where municipal corporations have vainly attempted through surrender of their charters and re-incorporation even with changed boundaries to avoid the payment of their obligations.

Broughton *v.* Pensacola, 93 U. S. 266;
Mount Pleasant *v.* Beckwith, 100 U. S. 514;
Mobile *v.* Watson, 116 U. S. 289.

These were actions at *law*, in which it was held that the debts of the old corporation fell upon the new as its legal successor. In the cases cited the court enforced the rights of general creditors in actions at law, while in the case at bar the powers of a court of chancery are invoked to tear aside corporate disguises in establishing and enforcing a specific lien upon the property and franchises of the old corporation.

The St. Louis & Chicago and the Litchfield & St. Louis railroad companies were therefore in the fullest sense the *legal successors* of the mortgagor. They took its property

and franchises subject to the existing lien upon them, and made accessions to the former in the exercise of the latter. The franchise which was mortgaged by the Chicago, Springfield & St. Louis R. R. Co. was not a franchise to be a corporation, but a franchise for building, equipping and operating a railroad between the terminal points specified, and along the general route designated in the charter.

Jones on Corp. Bonds & Mortgages Sec. 15. In exercising this *franchise*, the successor corporations did so *cum onere*.

It is too plain for argument, that under the facts in this case complainants could have enforced their right to a general judgment against these successor corporations. It was not that they assumed a debt, but that it was essentially *their* debt, as in the view of a court of equity, they are essentially indentical with the original debtor.

A fortiori then, all the property acquired by either of these successor corporations in the exercise of the mortgaged corporate franchise is subject to the lien of the mortgage thereon.

It necessarily follows, therefore, that the lien of complainants' mortgage is prior in right, not only to the successor corporations, but to any party claiming by or under them by mortgage or otherwise. It is unnecessary to discuss whether under such facts as are disclosed in this record, a subsequent mortgagee under the successor corporation could be held in any case to have a better title than his grantor, as under the facts of the case at bar they are charged with *full notice* by the recitals of their record chain of title, such as it is.

V.

The lien of complainant's mortgage extended not only over the 28 miles of road, i. e., from Mount Olive to a

point 18 miles north of Litchfield, admitted to have been in the actual process of construction and partially completed, when the work of construction was resumed under the new corporate organizations in 1885, but over the *entire line* of railroad completed under the two new organizations between the original termini.

This proposition is a corollary from the preceding. It is immaterial that one of the successor corporations, or more accurately, that Mr. Wing in one of the corporate disguises which he saw fit to assume, in exercising the mortgaged franchise of the Chicago, Springfield & St. Louis R. R. Co. to build a railroad from East St. Louis to Springfield, made a deviation from the route over part of the line from that originally contemplated; complainants' mortgage was upon the *entire* railroad built and *to be* built, and upon its franchise to build a railroad between the designated termini. Such a railroad franchise is an entirety.

Jones on Corp. Bonds & Mortgages, Secs. 71 and 101.

It was held in Meyer *v.* Johnston, 53 Ala. 237, and *s. c.* 64 Ala. 603, that the lien of the railroad mortgage previously executed is not impaired by any deviation of the route as long as this is kept within the general plan and direction authorized by the charter of the road, the court saying, 53 Ala. 327: "the deviation was thus merely an "alteration in plan of structure of work entered upon, one "of those departures from the original design which in such "matters are not infrequent. To hold that such a change in "the adopted plan of a great enterprise which the company "continued to prosecute, especially when the change was "allowed on the application of the company without partici-"pation therein by the bondholders, should deprive the lat-"ter of the lien they had bargained on the entire road in "Alabama, would be unreasonable and unjust."

In Wellink *v.* Morris' Canal & Banking Co., 4 N. J. Eq. 377 which case was cited approvingly by this court, though not upon this specific point, in Galveston R. R. *v.* Coudrey, 11 Wallace, the survey was made prior to the mortgage, was subsequently varied and it was claimed that the lien of the mortgage only extended to that part of the canal which was completed when the mortgage was executed. It was held that the act authorizing the mortgage contemplated a mortgage upon the entire canal and that complainant was entitled to a sale of the entire canal with all appendages.

Under the Illinois statute than in force (Hurds' Rev. 1883, p. 865) express power was given the company "to mortgage its corporate property and franchises."

It was held in Seymour *v.* Canandaigia & Niagara Falls R. R. Co., 25 Bael, 288, under similar statute that power was given to mortgage franchises and rights acquired and to be acquired as an *entirety*, and that it was immaterial that the road had not been at time entirely located or that the location, if previously made, was afterwards changed, and that the mortgage covered a *branch* road, not completed at time of original location, as incident to the principal grant.

In Elwell *v.* Grand St. & Newtown R. R. Co., 67 Barb. 83, it was held that a mortgage under same statute, upon franchise and after-acquired property, binds the road *as built*, notwithstanding a change was made in the route, before it was completed, the court saying: "to hold that by deviating from the route laid down the road could be *pro tanto* relieved from the lien would be to announce a very dangerous doctrine."

See also Jones on Corp. Bonds & Mortgages, Sec. 101.

It is clear from the testimony in the record that the change or deviation was a mere incident, and subordinate

to the main purpose of completing the railroad between the original termini or between the two important sub-termini, Litchfield and Springfield. It consisted in the straightening of the line at a point some 18 miles north of Litchfield so that at that point it continued on an air line north to Springfield instead of deviating a few miles to the northeast as originally planned. Complainants had no voice in this change, and through it their lien upon the rights of way secured and grading done upon the abandoned part of the route were necessarily made valueless.

It necessarily follows, therefore, from this doctrine of *legal successorship*, that the act of the St. Louis & Chicago Ry. Co. in deviating from the original route can be of no greater force or effect as to complainants' lien than the same act would have been on the part of the Chicago, Springfield & St. Louis R. R. Co. if it had undertaken to deviate from the original route in the exercise of its mortgaged franchise.

VI.

The decree should be reversed with directions to enter a decree establishing complainants' lien for the full amount due on their bonds upon the entire line of railroad constructed between the original termini by either the original mortgagor or its successors, prior in right to the mortgage of the Mercantile Trust Company or the American Loan & Trust Company upon the admitted facts of the case, even including the testimony admitted on behalf of the defendants which had no warrant under the pleadings, and as to which complainants had no day in court.

The case has thus far been discussed upon the case as made in the court below upon the *pleadings* and proofs.

It is submitted that upon the case so made, and specifically *found by the court*, there being no dispute as to the facts, complainants were entitled to a decree for the full amount of their bonds and interest thereon, on the entire line of railroad.

But as already seen, the decree of the court below was not rendered upon the case as made by the pleadings and proofs, but inferences were drawn by the court from certain proofs, not pleaded in any answer, admitted in evidence against complainants' objection, which led the court to deny complainants any lien upon the property north of Litchfield and to limit their recovery upon the line below Litchfield to the sum of $20,000.00, the amount which it found from this evidence alone was paid for these bonds.

Although as already shown complainants are entitled to a reversal of the case upon this ground alone, that the decree of the court below was not upon the case as alleged and proved, we submit that no remanding of the case for amendment of the pleadings and rehearing is required, for the reason that there is nothing whatever in the facts thus improperly admitted in evidence, nor in any inference which can lawfully be drawn from them, which affords the slightest ground for denying or questioning to complainants the full relief prayed.

The evidence, upon which the action of the court was wholly based, is found on pages 218 to 235 of the printed record.

The facts according to this evidence are simply these:

In November, 1883, after the work of construction on the Chicago, Springfield & St. Louis R. R. Co., had been done as heretofore stated, and the two miles of track had been certified to the Central Trust Company and $50,000.00 of bonds had been issued pursuant to the contract to the Empire Construction Company, Mr. Wing at that time owning all

the stock of the Construction Company (Rec. 232) and having advanced to it some $80.000.00 in addition for the work of construction (Rec. 232), applied to Robert B. Wade for financial assistance in securing a loan of $35,000.00. It was thereupon agreed that Wade should indorse Wing's note for that amount, payable four months after date, paying the proceeds to Wing and receiving from him as collateral security therefor the $50,000.00 of bonds which had been delivered to the Empire Construction Company by the Central Trust Company and sundry other collateral. Under the agreement (M. Rec. 232–234) the note was to be renewed at Wing's option for an additional period of two months on notice in writing to Wade fifteen days before maturity and it was further agreed that Wade should have the right at *his option* of taking an interest in the construction contract, *i. e.*, in the stock of the construction company and in Wing's advances aggregating $105,000.00 on paying the $35,000.00 himself, but if Wade did not exercise this option, then Wing was to pay the note and redeem his collateral and failing to do so, Wade was given the right to sell without notice or advertisement and of *himself* becoming the purchaser at such sale, and Wing agreeing to make good any deficit at such sale. This option given to Wade was *never exercised*, but in January, 1884, before maturity of the note, he died. After ineffectual efforts of the representatives of the estate to collect the amount due from Wing or to obtain security, in December, 1886, complainants made public sale of the bonds, giving notice not only to Wing but by advertisement, though not required to do either by the terms of the contract, and became themselves the purchasers as they were authorized to be by the contract at the sum of $20,000.00 (Rec., pp. 232–235). It was admitted for the purpose of saving the taking of proof, that credit was given to Mr. Wing for this amount of his indebtedness, and

that collection of the balance remaining due thereon was afterwards enforced against him by personal judgment and execution, and the remaining collateral was thereupon surrendered to him. There was no testimony whatever and it is not claimed that Wade ever exercised the option to become interested in the construction company contract. On the contrary it was admitted that he died before the note matured, and over a year thereafter, in February, 1885 (Rec., 234), the original party authorized to make the sale of the securities having left the State, Wing signed a supplemental agreement appointing a substitute to exercise such power of sale in case of default. The only finding of the court as to Wade's connection with Wing in the transactions other than as to the terms of the contract of pledge as above stated, is "that Wade at the time of the "pledge was informed of and knew the terms of said con- "struction contract and of the rights of said construction "company and of the rights of said Wing therein and "thereunder."

We quote further from the decree:

The said note was not paid at maturity and said option of purchase was not exercised, and the said bonds were on the 15th day of December, 1886, sold under the terms of the pledge and were purchased and are held by the complainants, who were and are the testamentary trustees appointed by the will of the said Robert B. Wade, deceased, at and for the sum of $20,000, and that the balance of the amount of said note of $35,000 and interest, after crediting the same with the $20,000 so realized from the sale of the said fifty bonds, was fully paid in part out of the collaterals other than said fifty bonds and in part by enforced payments from the said D. L. Wing; *that the complainants are the holders of said fifty bonds*, together with the interest coupons thereon which matured May 1, 1884, and all interest coupons thereon since matured and to mature.

It is undisputed, that the bonds in suit were lawfully delivered by the Central Trust Company to the Empire Construction Company in strict accord with the contract with the railroad company; that the amount theretofore expended upon construction by or through the construction company (Rec., p. 232) far exceeded the amount of the bonds and that consequently the *mortgagor received full value thereof*; that Wing, as president of the construction company, had full power to dispose of the bonds, and no equities whatever are asserted in behalf of the mortgagor in regard to their negotiation. It is clear that as between Wade on the one hand, and Wing and the Empire Construction Company on the other, the former became the lawful holder of the securities under the contract of pledge, and indeed the court so finds.

It is unnecessary to cite the authority of either the text writers or of adjudged cases, as to the rights and duties of pledgees of such securities. Even if the right of redemption belonging to Wing or the Empire Construction Company had never been foreclosed under the terms of the contract, it would have been the right and duty of the *pledgee* to enforce payment of the securities by the proper judicial proceedings and to foreclose the mortgage securing said securities. While it is difficult to see what possible relevancy to the issues of this case, where complainants are admitted to be the holders of the bonds, are the relations of the holder to a pledgor other than the mortgagor, the fact is undisputed that the title of complainants has become absolute even, as against the pledgor, in precise accord with his contract.

The fraudulent contrivances of Wing in the admitted corporate transfers and reorganizations were long subsequent to the contract of pledge of November, 1883, under which complainants acquired their bonds. Up to the time complainants had become purchasers for value of the bonds in

question, Wing, or the Empire Construction Company, had done nothing in the matter so far as this record discloses, in regard to the negotiation of the bonds or as to the corporate property which he, or it, had not the lawful right to do. Complainants' rights *then* became fixed as purchasers for value of the securities and whether as pledgees, with the right in their pledgor to redeem, or, subsequently as owners, in either case they are the *holders for value* and as such entitled to enforce the mortgage for the full amount thereof upon the property lawfully subject thereto.

It is submitted that these propositions are too obvious to require extended discussion, and even considering all the facts in evidence those not pleaded as well as those duly pleaded, the action of the court was as unwarranted and erroneous in limiting the recovery of complainants to the amount paid for their bonds at pledgees' sale, as it was in confining their mortgage lien to the southern part of the mortgaged railroad.

VII.

The decree, in so far as it is adverse to complainants, is erroneous upon its face in that it is inconsistent with its own findings of fact.

The case thus far has been discussed in the light of the pleadings and proofs, and also in the light of the proofs irrespective of the pleadings, but so far as complainants' rights upon this appeal are concerned, it is not necessary to look beyond the *face of the decree.*

It is elementary in equity pleading that the decree must be consistent with itself,— that its declaration of the rights of parties, and the relief adjudged therein must be based upon the findings of the ultimate facts in the decree con-

tained; and that error in that regard, *i. e.*, error apparent upon the face of the decree, without resorting to the proofs may be corrected by a bill of review in the same court without resorting to appeal.

Story's Equity Pleading, Sec. 405.

It is held further that this error apparent which will warrant the filing of a bill of review may be found in the pleadings and the decree.

Story's Equity Pleading, Sec. 407.

And it follows that the error in the decree in the case at bar heretofore pointed out (*supra*, p. 31), in failing to conform to the issues made by the pleadings, was error of this description.

But we have now to deal only with the error apparent upon the face of the decree itself, and as error of this description does not require an appeal for its correction, *a fortiori*, it is fatal and reversible error upon appeal. The decree in the case at bar finds from the proofs substantially all the probative facts alleged in the bill as the basis of plaintiff's right of recovery, as follows:—

1. The execution, delivery and recording of the mortgage sued upon, with description of the route of the railroad in question, and covering future acquired property and franchises.

2. The contract with the Empire Construction Company, the partial construction of the railroad, the execution of the bonds secured by the mortgage, the delivery of the same to the trust company, the completion and certification of the two miles of railroad, and the certification and delivery of

the fifty bonds in suit to the construction company in accordance with the contract.

3. The acquisition of the rights of way for the railroad company by the construction company and the partial construction of the railroad thereon.

4. The organization of the St. Louis & Chicago Ry. Co. and the transfer by the Empire Construction Co. through Cooley & Co. to the new railroad of the unfinished railroad north of Litchfield for the sum of $142,015, and that said deeds with such recitals were duly recorded prior to the mortgage by the St. Louis & Chicago Ry. Co. to the Mercantile Trust Company.

5. That the St. Louis & Chicago Ry. Co. took possession of the uncompleted line conveyed by the Empire Construction Co. through Cooley & Co. and "mingled other work and materials therewith and completed the railroad" from Litchfield to Springfield.

6. That the Empire Construction Company in like manner transferred through Cooley & Co. the unfinished railroad south of Litchfield to the Litchfield & St. Louis Ry. Co. and that the Litchfield & St. Louis Ry. Co. took possession of such uncompleted road south of Litchfield and "mingled ot her work and materials therewith and completed" that road from Litchfield to Mount Olive and appropriated the rights of way acquired for the old railroad south of Mount Olive to Alhambra; that the complainants were the holders of the bonds and coupons outstanding sued upon; that default had been made; and that the trustee had declined to institute suit.

Thus all the facts material to complainants' case were specifically found by the court. The court, it is true, found

further facts, but these further facts were irrelevant to the issues made by the pleadings and irrelevant in any point of view to complainants' rights as established by the foregoing facts found by the court, from the proofs. The action of the court, therefore, in refusing to enforce complainants' rights north of Litchfield and in limiting their recovery south of Litchfield to $20,000.00 is not only "error in the decree," but *error apparent* in that the decree is thus rendered inconsistent with its own findings of fact.

The only cross-appellant from this decree is Mr. Pratt, as successor of the American Loan & Trust Company. The other parties defendant, including the only parties who have any interest shown by the record in the property *north* of Litchfield, to wit, the St. Louis & Chicago Ry. Co. and the Mercantile Trust Company, the latter being the only defendant who upon any theory required notice of complainants' rights, and the Chicago, Springfield & St. Louis R. R. Co., the original mortgagor, stand in this court as appellees only, and as such are bound by the decree as rendered. It is not open to any of them to inquire whether the evidentiary facts sustain these findings in the decree. They are bound by them.

Chittenden *v.* Brewster, 2 Wall. 191.

It remains only to consider the position of the only cross-appellant, American Loan & Trust Co., and Mr. Pratt, its successor. In the first place it is difficult to see upon what basis the cross-appellant has any standing in this court. The mortgage under which they claim is not set out in the record, and beyond the allegation in the petition to be made a party (Rec., p. 44), that the mortgage covered the property upon which the complainants had been awarded their lien of $20,000.00, *i. e.*, the road south of Litchfield, there is nothing in the record from which we can even infer the

terms of the mortgage or the property which it covered. Their petition recites that their mortgage was executed by the defendant, the St. Louis & Chicago Ry. Co., but there is nothing in the record to show how the St. Louis & Chicago Ry. Co. acquired even a color of title whereon to execute a mortgage on the line south of Litchfield. Giving every presumption therefore to the action of the court in allowing the cross-appellant to intervene, it is difficult to see how its standing or that of Mr. Pratt, its successor, can be maintained in this court, and it would therefore follow that the cross-appeal should be dismissed.

But it is immaterial whether the cross-appeal is allowed to stand or not. The order allowing it to intervene (Rec., p. 47), provided that it should adopt and accept the answer theretofore filed by the mortgagor, the Chicago, Springfield & St. Louis R. R. Co. The application to be made a party (Rec., p. 43), showed that the date of its mortgage was *subsequent* to the filing of complainants' bill, to wit, April 1, 1887, complainants' bill having been filed on the 25th of the preceding January. The answer thus adopted by the intervenor (Rec., p. 28), admitted the substantial averments of the bill, as to the facts necessary to the proof of complainants' case, leaving nothing in issue except through argumentative denials of the extent of complainants' lien.

We therefore submit that so far as the decree is adverse to complainants it is erroneous upon its face. This is clearly illustrated in finding that complainants are the *holders* of $50,000.00 in bonds and accrued five years' interest thereon, and then rendering judgment against the *confessed debtor*, the mortgagor, for $20,000.00. The books will be searched in vain for clearer illustration of error apparent on the face of a decree.

It is therefore immaterial in what light this case is considered, whether upon the decree, the pleadings and proofs,

as causes upon appeal are properly considered, or upon the *proofs alone* without regard to the pleadings, or even upon the *face* of the *decree alone* without resorting to either pleadings or proof, the position of complainants is equally clear, and requires, we submit, only the application of established principles of law to admitted facts.

We therefore ask that the decree of the court below be reversed with directions for the entry of a decree in favor of complainants for the full amount due upon their bonds upon the entire line of railroad constructed by the mortgagor or either of the successor companies between the original termini of the franchise of the mortgagor paramount to the subsequent mortgage of the Mercantile Trust Co. and to the subsequent mortgage, whatever it may be, acquired *pendente lite*, represented by Mr. Pratt, the successor of the American Loan & Trust Company.

FREDERICK N. JUDSON,
AND CHARLES S. TAUSSIG,
WITH WHOM IS SAMUEL P. WHEELER,
For Complainant-Appellants.

149 U.S. 327

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No. 247.

BELLE N. B. WADE and WARNER M. HOPKINS, Trustees,
Appellants,

vs.

THE CHICAGO, SPRINGFIELD AND ST. LOUIS RAILROAD COMPANY, THE MERCANTILE TRUST COMPANY OF NEW YORK ET AL.

TERM No. 248.

DALLAS B. PRATT, Trustee,
Appellant,

vs.

BELLE N. B. WADE and WARNER M. HOPKINS Trustees.

Brief for Dallas B. Pratt, Trustee, The Mercantile Trust Company and the Central Trust Company of New York, Appellees in No. 247; and Dallas B. Pratt, Trustee, Appellant in No. 248.

ADRIAN H. JOLINE,
Of Counsel.

C. G. Burgoyne, Walker and Centre Sts., N. Y.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

BELLE N. B. WADE and WARNER M. HOPKINS, Trustees, Appellants, vs. THE CHICAGO, SPRINGFIELD AND ST. LOUIS RAILROAD COMPANY, THE MERCANTILE TRUST COMPANY OF NEW YORK ET AL.	No. 247.
DALLAS B. PRATT, Trustee, etc., Appellant, vs. BELLE N. B. WADE and WARNER M. HOPKINS, Trustees.	No. 248.

BRIEF FOR DALLAS B. PRATT (SUBSTITUTED TRUSTEE IN PLACE OF THE AMERICAN LOAN AND TRUST COMPANY), THE CENTRAL TRUST COMPANY OF NEW YORK, AND THE MERCANTILE TRUST COMPANY OF NEW YORK, APPELLEES IN THE APPEAL FIRST ABOVE ENTITLED, AND FOR DALLAS B. PRATT (SUBSTITUTED TRUSTEE), APPELLANT IN THE APPEAL SECOND ABOVE ENTITLED.

These are cross-appeals, taken from a decree of the Circuit Court of the United States for the Southern District of Illinois, in equity.

The complainants claimed to be the holders of fifty first-mortgage bonds of the Chicago, Springfield and St. Louis Railroad Company (being all the bonds issued by that company); and filed their bill to enforce an alleged mortgage lien upon the railway of the company, which was supposed to extend from Springfield, Illinois, to East St. Louis, Illinois. The decree of the court was in their favor to the extent of the amount which they paid for the bonds, and restricted their lien to property south of Litchfield, Illinois, which the defendants contend is not subject to the lien. Complainants have appealed because they were not awarded the full relief to which they consider themselves entitled. The American Loan and Trust Company of New York appealed from the decree on the ground that the bill should have been dismissed, and Dallas B. Pratt is its successor.

Statement of the Case.

The proofs appearing by the record are by no means full or satisfactory upon some of the questions in controversy. But there are some leading facts which are not controverted.

Facts Which are Substantially Undisputed.

The Chicago, Springfield and St. Louis Railroad Company was organized under the laws of Illinois January 17, 1883, for the purpose of constructing and operating a line of railway from Springfield, Illinois, to East St. Louis, Illinois *(Articles of Incorporation*, pp. 56, 68*)*. Its route, as laid out and shown upon the map filed with the Secretary of State, extended from a point on the Gilman and Clinton branch of the Illinois Central Railroad in Springfield, by way of Litchfield and Mount Olive, to the bridge junction at East St. Louis, a distance of about ninety-eight miles *(Record*, pp. 21, 25, 29, 81, 85*)*. Prior to January 17, 1883, there

was in existence a corporation known as the Springfield and St. Louis Railroad Company, created for the purpose of building a railway between Springfield and East St. Louis; and, on February 17, 1883, it had conveyed all its property to one Delos Van Deusen. Exactly what this property was, does not appear by the record; but the Chicago, Springfield and St. Louis Railroad Company seems to have authorized the purchase thereof from Van Deusen for the sum of $10,000 (*Record*, p. 83), though there is no evidence of any conveyance from Van Deusen to the railroad company.

On March 3, 1883, the Empire Construction Company, of which one D. L. Wing was president, and C. H. Wing secretary, entered into a contract with the Chicago, Springfield and St. Louis R. R. Co. to construct and equip the railway of the last-mentioned company in consideration of the delivery to it of the first mortgage bonds of the railroad company to the amount of $2,500,000 par value, and $990,000 par value of the capital stock of the railroad company (*Contract*, pp. 85–90). The bonds and stock were to be delivered to the Construction Company at the rate of twenty-five bonds and eighty shares of stock for each mile of railway constructed, upon the certificate of the chief engineer showing the fact of such construction (*Ib.*, p. 89).

Thereafter the railroad company by vote of the stockholders and directors authorized the execution and delivery to the Central Trust Company of New York, as trustee, of a mortgage or deed of trust, dated May 1, 1883, conveying all its line of railway and other property to said trustee to secure the payment of bonds to the amount of $2,500,000, bearing interest at six per cent. per annum (*Proceedings*, pp. 91–104). The execution and delivery of this mortgage is admitted by the answers of the several defendants other than the Mercantile Trust Company, which put the matter in issue (*Record*, p. 18). It appears by the Record (p. 174) that a deed of trust or mortgage executed by the Chicago, Springfield and St. Louis Railroad Company to the Cen-

tral Trust Company of New York, dated May 1, 1883, was offered in evidence. The paper is not, however, contained in the record, and there is no proof whatever that it was the same mortgage which was authorized by the railroad company, or as to what property was covered by it. It was objected to for incompetency, immateriality and irrelevancy, and because it did not appear to be properly signed, acknowledged and certified to *(Record*, p. 174*)*. As far as the Mercantile Trust Company is concerned, we shall insist that there is no proof of the mortgage.

About April, 1883, the Empire Construction Company proceeded with the work of constructing the railroad. Precisely what and how much it did is not wholly clear. But in July or August, 1883, it suspended work *(Record*, p. 396*)*. It had made surveys, plats and profiles, and constructed embankments and trestles between Litchfield and Mount Olive, and over portions of the line at various intervals north of Litchfield. The contracts and instruments securing rights of way were delivered to it, the Construction Company, and no deeds conveying rights of way either to it or to the Chicago, Springfield and St. Louis R. R. Co. were ever recorded.

The Empire Construction Company had also completed two miles of railway upon and through the streets of the City of Litchfield, north of the line of the Indianapolis and St. Louis Railway, under license from the City Council granted to the railroad company to occupy the said streets *(Record*, pp. 219, 220, 197*)*.

Upon certificates of the chief engineer showing the construction of said two miles of railway, the Central Trust Company of New York certified, and there were issued to the railroad company, and delivered to the Empire Construction Company, fifty bonds of the Chicago, Springfield and St. Louis Railroad Company of the par value of $1,000 each, bearing coupons representing semi-annual installments of interest *(Record*, pp. 2, 12, 21, 25, 29, 175*)*.

On November 5, 1883, D. L. Wing, being the president and owner of all the capital stock of the Empire Construction Company, and having, therefore, advanced to the Construction Company $80,000, which the latter was unable to repay, pledged the said stock, together with the fifty bonds above mentioned and other securities, to Robert B. Wade, to secure the endorsement of Wade upon Wing's note for $35,000, payable four months after date at the Bank of Commerce, St. Louis, under an agreement by which Wing had an option to renew the note for two months after its maturity, and by which Wade had an option to purchase, at or before the maturity of the note, a thirty-five-one hundred and fifth's interest in the stock of the Construction Company, and Wing's claim for advances made to the Construction Company. If Wade exercised the option it was to be treated as a payment of the note.

(Agreement, pp. 232–234*)*.

The agreement recited, among other things, that the $80,000 advances had been made to enable the Construction Company to pay for work done in the construction of the Chicago, Springfield and St. Louis Railroad.

Wing had also informed Wade that the Construction Company had a contract from East St. Louis to Springfield; that there had been about two miles of track laid, for which bonds had been issued; and that there was in the neighborhood of twenty-five or thirty miles of grading completed and contracts for right of way made *(Record*, p. 220*)*.

The bonds were then in default for non-payment of the November coupon *(Bill of Complaint*, p. 8*)*.

Wade died about January, 1884 (p. 220), and the complainants, the trustees under his will, sold the fifty bonds at public sale on the Merchants' Exchange, St. Louis, December 15, 1886 *(Record*, p. 222; *Notices*, pp. 234, 235*)*. They were purchased by complainants for $20,000. This sum was credited to Wing on a judg-

ment confessed by him, in the St. Louis Circuit Court, for his debt to Wade. Suit was brought on that judgment in the United States Circuit Court for the Southern District of Illinois (the $20,000 being credited therein), and judgment was rendered in the last-mentioned suit for the balance due. This judgment was paid and satisfied, and the remaining collateral securities held under the contract of November 5, 1883, were surrendered to Wing and received by him *(Record*, p. 222*)*.

In the meantime, after the making of the Wade contract and before the complainants took any action to enforce the pledge, the Empire Construction Company became unable, through financial embarrassment, to complete the execution of its contract of March 3, 1883. It had practically abandoned all attempt to perform its agreement for more than year and a half *(Record*, p. 296*)*. The stockholders of the railroad company on April 22, 1885, authorized the execution of a new or modified contract with the Empire Construction Company *(Record*, p. 108*)*. Such a new contract was made and accepted in April, 1885 *(Record*, pp. 112, 118*)*. This last contract was itself rescinded and set aside on May 26, 1885 *(Record*, pp. 119–120*)*.

On May 19, 1885, articles were filed incorporating the St. Louis and Chicago Railway Company to construct a railway from Litchfield to Springfield; and on May 29, 1885, articles were filed incorporating the Litchfield and St. Louis Railway Company to construct a railway from Litchfield to Alhambra, Ill. *(Record*, pp. 60–62*)*.

On May 26, 1885, the Empire Construction Company, for the consideration of $142,015.11, transferred and conveyed to H. H. Cooley & Co. a copartnership composed of H. H. Cooley and C. H. Wing *(Record*, p. 227*)* all the right of way acquired by it for the Chicago, Springfield and St. Louis Railroad Co., all cross-ties, excavations, trestle work, tiling and all work done and materials provided for the construction of the

Chicago, Springfield and St. Louis Railroad Co. between Litchfield and Springfield (*Record*, pp. 125–128, p. 239). On the same day H. H. Cooley & Co., by deed duly recorded in the Recorder's Office of Montgomery County, Ill., June 1, 1885, transferred and conveyed the same property to the St. Louis and Chicago Railway Co., in consideration of one dollar and of a contract entered into on that day between Cooley & Co. and the St. Louis and Chicago Railway Company (*Record*, pp. 128, 129, 239).

It appears from the findings in the decree (p. 239) that on June 12, 1886, the Empire Construction Company conveyed to H. H. Cooley & Co., in consideration of $5,000, all the real estate and property acquired by it for the Chicago, Springfield and St. Louis R. R. Co. south of the Indianapolis and St. Louis Railway and between Litchfield and Alhambra, and that on the same day Cooley & Co. conveyed the same property, in consideration of $75,000, to the Litchfield and St. Louis Railway Company. No such instruments of transfer appear in the record. It appears (p. 125) that complainants offered in evidence some conveyance from the Empire Construction Company to Cooley & Co., dated June 12, 1886, and also some conveyance, of the same date, from Cooley & Co. to the Litchfield and St. Louis Railway Co., to both of which objection was made for immateriality, informality in execution and manner of certification. An obscure entry on page 129 indicates that some papers, not clearly described, were marked Exhibits 8 and 9. There are references, scattered through the testimony, to some transfers of the property, south of Litchfield, to Cooley & Co., and from that firm to the Litchfield and St. Louis Co. But, upon the record, there is no proof whatsoever to sustain the specific finding on that subject contained in the decree.

The St. Louis and Chicago Railway Company, the corporation which thus acquired the title to property lying north of Litchfield and between Litchfield

and Springfield, mortgaged its property to the Mercantile Trust Company, of New York, as trustee, to secure an issue of its bonds to the amount of $500,000, and the mortgage was duly recorded (*Bill*, p. 5; *Decree*, p. 239). There was also a second mortgage to the Mercantile Trust Company (*Bill*, pp. 5, 6), but it was afterwards discharged, and the Mercantile Company disclaimed any right or interest under it (*Answer*, p. 18).

The Litchfield and St. Louis Railroad Company, the corporation whose proposed line was to extend south from Litchfield, mortgaged its property to the Central Trust Company, of New York, as trustee, to secure an issue of $200,000 of bonds (*Bill*, p. 7). Complainant's petition for a rehearing (p. 243) states that this mortgage was canceled and discharged, but we find no evidence of such fact in the record.

The Pleadings.

On January 25, 1887, the complainants filed their bill to foreclose the mortgage by which it is alleged that the fifty bonds were secured.

The BILL alleges the execution of the bonds and the making and recording of the mortgage of the Chicago, Springfield and St. Louis R. R. Co.; the holding by complainants of the fifty bonds; that the Empire Construction Company was, prior to the execution of the mortgage, constructing the road under the contract in evidence; that the Construction Company surveyed and located, and secured right of way for nearly the entire distance between the terminal points of the railroad, including right of way along Adams street and right of way, one hundred feet wide, over Litchfield Reservoir property, granted by ordinances of the City of Litchfield, and that the deeds and contracts for such right of way were never placed on record, but were held in the possession of D. L. Wing and his associates in the Construction Company until returned to the respective grantors or destroyed.

The bill further alleged that grading had been done and bridges built on part of the route; that two miles of track had been completed; that the fifty bonds were issued for the same; and that the Construction Company abandoned its work.

It charged, in effect, that the organization of the new companies—the St. Louis and Chicago and the Litchfield and St. Louis Companies—and the conveyances to them by the Construction Company, through intermediaries, were the result of a fraudulent scheme or conspiracy on the part of D. L. Wing and others to obtain possession of the property of the Chicago, Springfield and St. Louis Railroad Company, to defeat the lien of complainants' mortgage, and to subject the property to new mortgages, which are described; and that, to that end, Wing had caused the evidences of title of the Chicago, Springfield and St. Louis Company to be destroyed or returned to the grantors, and new deeds and contracts taken in the name of the new corporations. It alleged that the holders of the new bonds, secured by the new mortgages, had full notice of complainants' rights and claims.

It alleged continuous defaults in payment of interest on the bonds—the first occurring November 1st, 1883—and that the Central Trust Company, trustee under the mortgage, had declined to foreclose, declaring its purpose of resigning its trusts under the several mortgages of which it was trustee, and prayed foreclosure and sale in the usual form.

The ANSWER of the CENTRAL TRUST COMPANY (p. 12) admitted the execution of the mortgages of the C., S. & St. L. and L. & St. L. Companies, and that it had refused to foreclose, alleging that it had resigned both trusts because it was advised that it ought not to take part in behalf of one set of bondholders in a controversy with another set of bondholders. It put in issue all the other allegations of the bill.

The ANSWER of the MERCANTILE TRUST COMPANY (pp. 17–20) admitted the first mortgage to it made by the St.

Louis and Chicago Railway Co., dated July 1, 1885, admitted the second mortgage, but alleged its cancellation, and put in issue all the other allegations of the bill.

The ANSWERS of the St. Louis and Chicago Railway Company (pp. 20–24), the Litchfield and St. Louis Railway Company (pp. 24–28), and the Chicago, Springfield and St. Louis Railway Company (pp. 28–31) are substantially the same.

They deny the conspiracy charged, and the several allegations of the bill relating to the alleged fraudulent scheme.

They assert in substance that the line of the Chicago, Springfield and St. Louis Company was surveyed and located and right of way obtained for only a small portion of the route; that the railroad company had only a contingent interest in it, except as to a part of Adams street, Litchfield, as to which it had only a license to pass over, which license had long since been revoked by the City of Litchfield; that all the ties, rails and materials, of which the two miles of track on Adams street had been constructed, were without the knowledge or consent of the Chicago, Springfield and St. Louis Company unlawfully and by sundry evil-disposed persons torn up and converted to their own use, damages wherefor the company was endeavoring to recover. They allege that this two miles of track was all that ever came under the lien of the mortgage. They say that the Empire Construction Company stopped its construction work for good reasons and by mutual consent, and deny that complainants have any lien upon any property claimed or held by the St. Louis and Chicago or the Litchfield and St. Louis companies or that either of those companies ever took possession of any property belonging to or acquired for the C. S. & St. L. Company.

Replications to the answers were filed.

After the hearing and decision of the cause the American Loan and Trust Company filed its petition

(pp. 41, 42) alleging that it was the trustee under a mortgage made by the St. Louis and Chicago Railway Company, dated April 1, 1887, to secure bonds to the amount of $1,100,000 (p. 40), which was a lien on the property upon which, by the decision of the court, the complainant had been awarded a prior lien; that, though not a party, it had appeared and been represented by counsel at the trial and took part therein; and prayed that it might be made a party and be allowed to plead. Thereupon, an order was made August 3, 1889 (*Record*, p. 46), that it be made a defendant, with all rights of exception, appeal, and the prosecution of writs of error, and it adopted and accepted the answer of the Chicago, Springfield and St. Louis Railroad Company, all the evidence and interlocutory proceedings to stand.

In this somewhat inartificial way the AMERICAN LOAN AND TRUST COMPANY was brought into the proceedings. Its corporate existence was terminated during the pendency of these appeals, and DALLAS B. PRATT was regularly substituted as trustee in its stead. On motion made in this court he became a party to the record in place of his predecessor in trust.

QUESTIONS INVOLVED.

The questions involved were in substance:

1. Whether the complainants' alleged mortgage constituted any lien upon the property of the St. Louis and Chicago Railway Company or any part thereof, and, if so, upon what part.

2. Whether the complainants' alleged mortgage constituted any lien upon the property of the Litchfield and St. Louis Railway Company or any part thereof, and, if so, upon what part.

3. Whether the complainants were entitled to en-

force their bonds for the amount of the face value thereof, or if at all.

Facts in Dispute.

The complainants called several witnesses to establish the following alleged facts :

1. That the mortgagor, the Chicago, Springfield and St. Louis Railroad Company, acquired divers parcels of land, or the right of way thereon, by grant from the owners of the lands.

2. That the lines of railway of the St. Louis and Chicago Railway Company and the Litchfield and St. Louis Railway Company were constructed in part over rights of way so acquired.

Without here entering into a minute investigation of the testimony on this subject, it is sufficient to say that the proofs show that the contracts or agreements for and title to all rights of way involved, even if taken in the name of the Chicago, Springfield and St. Louis Company or its predecessor, the Springfield and St. Louis Company, were acquired by the Empire Construction Company with moneys furnished by the Construction Company, and that the last-mentioned company never turned over or delivered such contracts or agreements to any railway corporation or corporations other than the St. Louis and Chicago Railway Company and the Litchfield and St. Louis Railway Company, and that the Chicago, Springfield and St. Louis Company never entered into possession of any railway or property, so far as appears by the proofs.

The line of railway of the Chicago, St. Louis and Springfield Railway Company, and the lines of the St. Louis and Chicago Railway Company, and the Litchfield and St. Louis Railway Company were by no means identical, unless the fact that the St. Louis and Chicago Railway Company's line extends over Adams

street, Litchfield, where the old railway had been, brings that portion of the new line under the old mortgage.

It is shown by the testimony of Kelly *(Record*, pp. 48–56) that, though grading and dredging was done north of Litchfield, yet the lines of the old company and those of the new company were not by any means identical.

The same is true of the testimony of Carter *(Record*, pp. 63–67). Beach (pp. 130–132) shows that the ownership was never out of the Empire Construction Company, that he really knew nothing about the line below Litchfield (pp. 137–138), that the Construction Company never turned over anything to the Chicago, St. Louis and Springfield Railroad Company (p. 138), that the latter company never paid for any work, and that it never accepted any work (p. 138).

Southworth showed that the money to acquire rights of way was all obtained and furnished by the Construction Company, and not by the railway company (pp. 163, 167 and 169).

There was no evidence which authorized the admission of parol proof as to the contents of the right-of-way contracts. The evidence showed that they were given to the Construction Company (p. 188), and they were not properly traced to the defendants. They seen to have gone with Wing's hands *(Record*, pp. 183, 172*)*.

The ties and iron on Adams street were all removed before any work was done on that line for the St. Louis and Chicago Company (p. 206), and no ties or iron which had belonged to the old company were used for the new construtions. The iron was taken up by persons named Beach and McLane and disposed by them, and the street was leveled down to grade by the city. No part of the original grading entered into the construction of the new track *(Record*, p. 223*)*.

The proofs also show that the Empire Construction Company abandoned its work for financial rea-

sons, entered into a new contract which provided for the cancellation of the fifty bonds *(Record*, p. 115*)*, and that this contract in turn was rescinded *(Record*, p. 120*)*.

THE DECREE.

On August 5, 1889, the court (GRESHAM, Circuit Judge) made and entered a decree of foreclosure and sale *(Record*, pp. 235–241*)*.

By this decree the bill was dismissed as to The Mercantile Trust Company and also, so far as it affected the railway between Litchfield and Springfield, as to the St. Louis and Chicago Railway Company. It gave to the complainants a lien upon that portion of the property described in the mortgage of the Chicago, Springfield and St. Louis R. R. Co. lying south of Litchfield, for the payment of the sum of $22,976.59, being the amount for which the complainants had bidden off the bonds at the sale, and interest from the date of sale; and in default of payment within a time limited, ordered a sale of the property in the usual manner.

The effect of this decree was, in case of default in payment of the said sum of money, to cut off the rights of the American Loan and Trust Company, as mortgagee, in any property south of Litchfield which was subject to the lien both of its mortgage and of the complainant's mortgage.

The complainants made application for a rehearing *(Record*, pp. 241–244*)*, which was denied *(Record*, p. 244*)*.

The complainants appealed, assigning errors, as follows *(Record*, p. 247*)*:

1. The court erred in dismissing the complainants' bill as to the Mercantile Trust Company.

2. The court erred in dismissing the complainants' bill as to the St. Louis and Chicago Railway Company.

3. The court erred in denying appellants a lien upon the line of the railway north of Litchfield.

4. The court erred in failing to decree the payment of the full amount due on the fifty bonds held by complainants.

5. The court erred in failing to decree the full payment of the fifty bonds held by complainants, together with interest thereon, and decreeing the complainants a prior lien for said amount upon the entire line of railway specified in their bill.

6. The court erred in denying the complainants' motion for a rehearing.

7. The court erred in denying the complainants the entire relief prayed for in their original bill.

The American Loan and Trust Company also appealed from the decree, and (by its successor, Pratt) assigns as error:

Assignments of Error.

1. The court erred in not dismissing the bill as to said American Loan and Trust Company.

2. The court erred in decreeing the complainants a lien for any amount on property of the St. Louis and Chicago Railway Company.

3. The court erred in decreeing the complainants a lien for any amount on property of the Litchfield and St. Louis Railway Company.

4. The court erred in decreeing the complainants a lien for any amount prior to the lien of the mortgage to the American Loan and Trust Company as trustee.

5. The court erred in decreeing the complainants a

lien for any amount by way of principal on the bonds in question, and in not properly declaring the fact, nature and extent of the default constituting the breach of the condition of the mortgage.

ARGUMENT.

First. THE BILL OF COMPLAINT WAS PROPERLY DISMISSED AS TO THE MERCANTILE TRUST COMPANY, AND AS TO THE ST. LOUIS AND CHICAGO RAILWAY COMPANY WITH RESPECT TO THE RAILWAY BETWEEN LITCHFIELD AND SPRINGFIELD, ILLINOIS.

I. The record contains no evidence tending to show that the complainants' mortgage constituted a lien upon any of the railway or property mortgaged to the Mercantile Trust Company.

The answer of the Mercantile Trust Company put the complainants to their proof on this subject (*Record*, p. 18).

The mortgage upon which complainants base their claim is not set forth in the record (see *Record*, p. 174). The paper which was offered in evidence, purporting to be a deed of trust or mortgage from the Chicago, St. Louis and Springfield Railroad Company to the Central Trust Company of New York, trustee, was objected to as incompetent, immaterial and irrelevant, and as not properly signed, acknowledged or certified to.

As it is not set out in the record, this court will not consider it.

It is true that the decree recites the existence of such a mortgage (*Record*, p. 236), but the finding should be disregarded as not based upon any evidence shown by the record. Certainly the court will not surmise or infer anything in regard to the provisions

and contents of such an alleged mortgage for the purpose of reversing the decree of the Circuit Court.

II. There was no competent or sufficient evidence establishing or tending to show that the mortgage of the Mercantile Trust Company covered, or that the St. Louis and Chicago Railway Company ever acquired or possessed any property to which the Chicago, Springfield and St. Louis Railway Company ever had any title whatsoever.

The testimony leaves it at the most a matter of grave doubt whether the line of railway of the St. Louis and Chicago Railway Company was in any respect coincident with the projected line of the Chicago, Springfield and St. Louis Railway.

The proofs are clear that the Empire Construction Company and not the Chicago, St. Louis and Springfield Railroad Company was the owner of whatever properties were acquired in connection with that enterprise. There is no evidence that the Chicago, Springfield and St. Louis Company ever had any title to any property, unless it be the right to lay a track in Adams street under ordinances of the City of Litchfield. But this was wholly abandoned, the ties and rails were removed and sold, and the street was restored to its original grade. The Chicago, Springfield and St. Louis Company had no right to a perpetual lien on the streets of Litchfield.

Under the contract between the Construction Company and the Chicago, Springfield and St. Louis Railway Company, the former was entitled to possession and control of all railway and property furnished under the agreement until the final and ultimate completion and acceptance of the road, and to receive all the income thereof (*Record*, p. 90). The complainants' own witness (Beach) testified that the construction company never turned the work over to the railroad company, that the railroad company never accepted it, and that so far as he knew it was never paid for by the railroad

company, adding that if it had been, he would have been apt to know it (*Record*, p. 138). There being no proof of any conveyance or transfer to the Chicago, Springfield and St. Louis Railroad Company, or by that company to the St. Louis and Chicago Railway Company, and no sufficient evidence that the latter company exercised or pretended to exercise any ownership over any property of the Chicago, Springfield & St. Louis Company, the decree on this branch of the case must be sustained.

The Chicago, Springfield and St. Louis Railroad Company might have had a right of action against the Empire Construction Company for a failure to complete and convey the line of railway in accordance with the contract of March 3, 1883, if the Empire Company was at fault, but if by an agreement made April 29, 1885 (*Record*, pp. 112–118), that contract was annulled, rescinded and held for naught.

The Empire Construction Company, under the contract of April 29, 1885, would have been liable for its failure to surrender to the railroad company the fifty bonds held by complainant, but on May 26, 1885, that contract was itself vacated and set aside by mutual consent (*Record*, p. 120). This restored the parties to their position under the old contract, and remitted the C., S. & St. L. Company to its claim for damages against the Construction Company, and the enforcement of such claim appears by the proceedings of the Board of Directors of the railroad company, held December 20, 1886, to have been recognized by the railroad company as its appropriate method of relief (*Record*, p. 122).

All this, however, would not make title in the Chicago, Springfield and St. Louis Company.

III. The complainants charge that the rescission of the construction contracts and the transfers from the Empire Construction Company to the St. Louis and Chicago and Litchfield and St. Louis companies, were

the result of a scheme of fraud devised by D. L. Wing to keep title out of the Chicago, Springfield and St. Louis Company, thereby leaving nothing for its mortgage to operate upon, and to furnish him (Wing) with the means of issuing new mortgages to secure new issues of bonds, free from any prior incumbrance in favor of complainant's bonds.

But if such a scheme were proven and established, it could not affect the rights of the Mercantile Trust Company, representing innocent holders in good faith of bonds secured by its mortgage, or the American Loan and Trust Company, standing in like situation, or the rights of the Central Trust Company as Trustee under the Litchfield and St. Louis mortgage.

The mortgage to the Mercantile Trust Company was made long before the complainants instituted any proceedings whatsoever, and that trust company has not been charged by any proof in the case with any notice, actual or implied, of any mortgage of the Chicago, Springfield and St. Louis Railroad Company, or any pre-existing lien on the property covered by its mortgage.

Unrecorded deeds to the C., S. & St. L. R. R. Co. would constitute no notice to a subsequent mortgagee, and that company was never in possession of the property.

Complainants did not even attempt to prove actual notice to the Mercantile Trust Company or to any of its bondholders.

The Central Trust Company, as trustee of the Litchfield and St. Louis mortgage, may have been chargeable with knowledge of the existence of the C., S. & St. L. mortgage, for it was the trustee thereunder, but not with knowledge that the properties were in any respect identical.

Its bondholders have not been charged by the proofs with any knowledge or notice on the subject.

As far as the rights of the two trust companies above mentioned are concerned, the alleged scheme of Wing

and all evidence relating to it is wholly immaterial, for they are strangers to the transaction.

With regard to the American Loan and Trust Company, it may be asserted that its mortgage bears date subsequent to that of the filing of complainants' bill. However that may be, the question as to the American Loan and Trust Company, so far as relates to the property north of the point in Litchfield on the Indianapolis and St. Louis road, constituting the dividing line between the lines of the Litchfield and St. Louis and the St. Louis and Chicago Railway Companies, is not of moment, because that property has since been sold under a decree of foreclosure and sale, obtained by the Mercantile Trust Company on its prior mortgage, upon which sale there was a deficiency.

Second. THE DECREE WAS NOT ERRONEOUS IN REFUSING TO THE COMPLAINANTS A LIEN TO THE EXTENT OF THE FULL FACE VALUE OF THE FIFTY BONDS AND INTEREST.

I. The complainants are trustees under the will of R. B. Wade, and the complainant Belle N. B. Wade is a devisee under said will *(Record*, pp. 234, 235*)*. The sale of the bonds made to enforce the pledge thereof to Wade was made by the complainants in those several capacities *(Record*, p. 235*)*. They purchased the bonds as trustees under said will *(Record*, p. 235*)*. By the terms of the original contract between Weed and Wing *(Record*, pp. 232 and 234*)*, Wade and all persons claiming under him were chargeable with knowledge of the terms of the contract between the Empire Construction Company and the railroad company, and of the rights of the Construction Company and Wing therein and thereunder. They were chargeable, therefore, with knowledge that the Empire Construction Company had the right to hold all the property it should acquire for

the purpose of constructing the railway until the final completion of the road, and was not required to turn over or deliver the property till such completion, and further with knowledge that the contract was unperformed.

The contract with Wade was made on November 5, 1883. The note of $35,000 matured on March 8, 1884, and was renewable for two months *(Record*, p. 233*)*. Complainants knew that no interest had ever been paid on the bonds. They were in default when Wade received them as collateral. Yet no steps whatever were taken by, or on behalf of, the pledgee or his successors to acquire title to the bonds or to enforce their alleged lien until December, 1886, more than two years and a half after the default. In the meantime, and in May, 1885, the Empire Construction Company had turned over all its property to the two new railway companies, and mortgages were made by the new companies to secure bonds which passed into the hands of *bona fide* purchasers without notice. What means had holders of the St. Louis & Chicago bonds of ascertaining that the lands and property covered by their mortgage were claimed to be covered by another mortgage, when there was no record evidence of any title thereto in the maker of such other mortgage ?

The fact that there was neither record title nor possession of the mortgagor railway company, and the complainants' knowledge thereof, brings the case within the reason of the rule that where a party claims to have an equitable title to or lien upon land and is out of possession his equitable title will be barred if he fails to take steps within a reasonable time to establish it, where innocent third parties have invested their means upon the faith of the existing apparent title.

The complainants were chargeable with notice of all the proceedings of the Empire Construction Company and the conveyances set up in the bill.

Long before they filed their bill the Mercantile Trust Company mortgage was made and recorded.

In *Leavenworth vs. Chicago, Rock Island and Pacific R'way Co.*, 18 Federal Reporter, 209, complainants, stockholders in railway company, filed a bill to set aside a consolidation. The court held that the stockholders were charged with notice of the proceedings and bound to proceed with reasonable diligence to annul them, adding :

" And however this may be, they cannot stand by for a series of years, making no sign of discontent, while other innocent parties invest their means upon the faith of the consolidation."

It is not necessary to multiply authorities to sustain this familiar rule. It would be grossly inequitable to permit the complainants to make a profit out of innocent bondholders through their own laches and inaction, and, after the completion of the railways by means of moneys arising from sales of the new bonds, assert a lien for the full face value of their old securities.

They were allowed a lien for the precise amount of their debt, which was $20,000 and interest, the balance of the $35,000 having been collected on a judgment against Wing.

Against innocent mortgagees they are entitled to no more.

II. It is a well-settled rule of law that, if the maker of collateral paper has any good defense against the payee who has pledged it, the pledgee can collect no more than the amount of the debt secured.

Jones on Pledges, § 675, p. 499.
Lacroix vs. Derbigny, 18 La. Ann., 27.

The Chicago, Springfield and St. Louis Railroad Company, in a suit by the Empire Construction Company upon these bonds, had a good defense thereto based upon the defaults of the Construction Company and its utter failure to perform its contracts.

It is true that where bonds are issued to a contractor, damages for not finishing the road in the time

specified by contract cannot be set up as against *bona fide* purchasers of the bonds *(McElrath vs. Pittsburg & S. R. R.*, 55 Pa. St., 189*)*, but their bonds were acquired with full knowledge and with notice of the contract and its terms.

The complainants are chargeable with notice of the contract and of the matters growing out of it, as well as of the default of the Empire Construction Company. They were themselves the purchasers at their sale, after they knew of the transaction by which the Construction Company had transferred to other corporations all the property on which they say they held a lien. But, whether they knew of it or not, they should not be allowed to assert, with respect to the property, a lien or claim in excess of the amount due on the debt for which they held the bonds as collateral.

III. Even a *bona fide* purchaser of negotiable securities from a pledgee thereof, or from a payee without right to sell, is restricted in his recovery to the amount actually paid by him, with interest.

The complainants being chargeable with knowledge and notice of the relations between Wing, the Construction Company and the railroad company, and of the default of the Construction Company in the performance of its contract, are not *bona fide* purchasers, nor are they in any better position, by reason of their formal purchase, than that of mere pledgees. As such pledgees they would be entitled to the protection of an owner only to the extent of amount due upon the loan.

Jones on Corporate Bonds and Mortgages, p. 175, and cases cited.

If they stood in the position of *bona fide* purchasers for value, they should not be allowed in equity to recover more than an amount sufficient to indemnify them against loss.

Where a corporation pledged its bonds to its agents, who, without lawful power to do so, sold them, and the purchasers resold them, it was held that the last pur-

chaser (who was a *bona fide* purchaser) was entitled to hold them only for the amount he paid on their purchase, and that equity and good conscience were satisfied by allowing him full indemnity.

Grand Rapids & Indiana R. R. Co. vs. Sanders, 54 How. Prac. (N. Y. Supreme Court), 214.

Where commercial paper, not valid in the hands of the payee, is negotiated by him to a *bona fide* holder, the latter is restricted in his recovery to the value, with interest, of the advances by him to the payee on the faith of it.

Todd vs. Shelbourne, 8 Hun (N. Y. Supreme Court, 1876), p. 510, and numerous cases cited on p. 512.

The court in the last-mentioned case say:

"The paper derives its vitality wholly from the circumstance that it has been obtained for value without notice by an innocent purchaser. For his protection it is maintained in his hands as a legal obligation. The object of the law is to save him from loss, and to do that a recovery of the amount he may have advanced is all that can be required."

The propositions on which we insist are that the complainants have, in equity, no better rights upon these bonds than the Empire Construction Company would have had, except so far as they have parted with value therefor; that the Empire Construction Company would not have been permitted in equity to enforce these bonds in view of their utter failure to perform their agreement and abandonment of their work; and that as the court has it in its power to do substantial right and justice without reference to the strict rules of the common law, substantial equity is accomplished by awarding to the complainants, if they are entitled to any amount, the sum which they paid, with interest, less what they have already collected on that account.

The case of *Carpenter vs. Longan*, 16 Wallace, 271,

is not authority against these propositions. In that case an assignee of a note and mortgage filed a bill of foreclosure, and the mortgagor pleaded by way of defense the delivery to the original mortgagee of certain merchandise, for the purpose of selling the same and having the proceeds applied to the payment of the note, which it was alleged he had failed to do. The court say (p. 273):

"Upon a bill of foreclosure filed by the assignee, an account must be taken to ascertain the amount due upon the instrument secured by the mortgage. Here the amount due was the face of the note and interest, and that could have been recovered in an action at law. Equity could not find that less was due. It was a case where equity must follow the law, and the decree that the amount due shall be paid within a specified time or that the mortgaged premises must be sold followed necessarily."

There, however, the transferee had no notice of the facts constituting the defense, and the quotation from *Powell on Mortgages* given to support the statement of law above cited, shows that it relates to a case where a mortgagee, after payment of part of the note, actually negotiates the note *for the value*, and that the endorsee or assignee will in that case "be entitled to have *his money* from the mortgagor."

In other words, while *Carpenter vs. Longan* sustains the right of a *bona fide* assignee, without notice, to enforce a security, notwithstanding part payment had been made by the debtor, yet it does not sustain his right to enforce it for any more than the amount he (the assignee) paid for the note and security.

IV. The complainants assert that the evidence as to their title and interest in the bonds was inadmissible, because no issue was made in respect thereto by the pleadings in the cause.

But the issue was sufficiently presented by the pleadings. The complainants alleged that they were

the holders of the bonds (*Bill of Complaint*, pp. 2, 8). The answers of the Mercantile Trust Company and the Central Trust Company put this allegation in issue (*Record*, pp. 12, 18). The answers of the railway companies admitted that the complainants were the holders (*Record*, pp. 21, 25, 29). But the bill itself prayed that *an account be had and taken of the bonds and coupons and of the amount due thereon* (*Record*, p. 8).

The court, therefore, had the right to ascertain and determine what was actually due to the complainants upon their bonds, and the investigation of the circumstances attending their acquisition of title was a legitimate subject of inquiry, even though none of the defendants had by any pleading affirmatively set up the specific objections relied upon.

If the court had ordered a reference to a master to ascertain the amount due upon the bonds, instead of itself taking the proof, as it did in this instance, it would have been entirely competent for the master to inquire into the nature of the holding by complainants.

It will be observed that the complainants did not allege that they were owners of the bonds, but only that they were the holders thereof. While, therefore, they might *prima facie* be entitled to prove them as if they were the owners, yet without any formal pleading it is always competent for the court to take proof as to the circumstances under which the bonds were acquired and the consideration paid therefor, in order to ascertain and determine the extent and nature of the actual interest of the bondholders.

"Upon a bill of foreclosure * * * an account must be taken to ascertain the amount due upon the instrument secured by the mortgage."

Carpenter vs. Longan, 16 Wallace, 271, p. 273.

It is the practice generally for the courts, even where the bill is taken as confessed, or the right of the plaintiff is admitted by the answer, to order a reference as a

matter of course, to determine the amount due upon the mortgage debt.

Corning vs. Baxter, 6 Paige, 178.
Chamberlain vs. Dempsey, 36 N. Y., 144.

The court may, however, make such determination itself.

Vaugn vs. Nims, 36 Mich., 297.
Rollins vs. Forbes, 10 Cal., 299.
See *Davis vs. Alvord*, 94 U. S., 545.

Upon such ascertainment, it is not competent for the *Master* to consider matter which should have been set up by cross-bill—as, for example, an account of the profits received by a mortgagee in possession *(Wycoff vs. Combs*, 28 N. J. Eq., 40; *Onderdonk vs. Gray*, 19 N. J. Eq., 65*)*, yet, even in that case, the *Court* will, upon affidavit, order the Master to inquire into such a matter, and make the proper credits, notwithstanding there was not a word in the pleadings on the subject.

Moore vs. De Graw, 1 Halstead's Chcy. (5 N. J. Eq.), 346, p. 349.

We submit that it is always within the power of a court of equity, where a complainant is endeavoring to enforce a lien, to adjudicate upon the just and fair amount due, even where no issue on the subject is presented by the answer.

The complainants were not placed at any disadvantage by the allowance of the testimony. They might well have applied to the court at the time (for the evidence was taken in open court at the hearing) for leave to introduce rebutting testimony. It does not appear that they made any such application. On the contrary, they submitted the cause, and it was not till after decision *(Record*, p. 241*)* that they complained of "surprise."

On the other hand, the Mercantile Trust Company and the American Loan and Trust Company, the only defendants who had any real and substantial interest to protect, were not chargeable with any knowledge of the

facts shown by Wing's testimony, and had they gone through the form of moving for leave to amend their answers, it would have doubtless been allowed on the spot. But it was unnecessary to amend, for the reasons heretofore stated.

In order to let in a defense that a claim is stale, it is not necessary that a foundation be laid by any averment in the answer.

Sullivan vs. Portland & Kennebec R. R., 94 U. S., 806.

V. Complainants were not entitled to any decree for principal, but, at the most, could have a decree for interest only.

The bill alleges that the bonds by their terms were not due until May 1, 1913 *(Bill* p. *2)*, and that there were defaults in the payment of seven successive coupons, beginning November 1, 1883 (p. 7), but nowhere alleges that the principal thereby matured, or that any amount is due for principal.

There was no evidence whatsoever to the effect that the principal had ever matured, and the decree does not declare it to be due.

It would have been error to award them a decree for principal.

Chicago and Vincennes R. R. vs. Fosdick, 106 U. S., 47.

Ohio Central R. R. Co. vs. Central Trust Co., 133 U. S., 83.

The mortgage not being in evidence, it cannot be said that by its terms the principal of the bonds might be made due before the year 1913.

But, if the form of the *contemplated* mortgage on pages 93 to 102 be examined, it will be seen that the provision on this subject is as follows:

"And it is hereby expressly agreed by the said party of the first part that, upon default made in the payment of either interest or principal *on any one hundred of said bonds* for the period of sixty days, then each and

all of said bonds shall become absolutely due *at the option of the majority in interest of the holders of said one hundred bonds in default" (Record,* p. 99*).*

If, therefore, we assume that there was a mortgage at all, and that it followed the form authorized by the directors, it will be seen:

1. That there is neither allegation nor proof of the exercise of any option to declare the principal due.

2. That there could not be any exercise of any such option, because there has never been any default on any one hundred bonds.

Third. THE DENIAL OF THE COMPLAINANTS' APPLICATION FOR A REHEARING CANNOT BE REVIEWED IN THIS COURT.

The granting or refusal of a rehearing in equity rests in the discretion of the court and is not the subject of appeal.

Roemer vs. Bernheim, 132 U. S., 103.

Fourth. THE COURT ERRED IN GIVING COMPLAINANTS A DECREE FOR ANY AMOUNT ON ANY OF THE PROPERTY DESCRIBED IN THE DECREE.

I. The property which the decree orders to be sold to satisfy complainants' alleged lien is:

"All the right, title, interest and equity of redemption of said Chicago, Springfield and St. Louis Railroad Company and of the Litchfield and St. Louis Railway Company and the St. Louis and Chicago Railway Company, in and to that portion of the property described in said mortgage and lying south of the Indianapolis and St. Louis Railroad, originally surveyed and

laid out for the Chicago, Springfield and St. Louis Railroad Company, and described as follows: The several pieces or parcels of land forming the track or roadbed of the railroad now known and called the Litchfield and St. Louis Railway from a point where said Litchfield and St. Louis Railway and the St. Louis and Chicago Railway cross the Indianapolis and St. Louis Railroad in Litchfield, Montgomery County, Illinois," &c.

There is no specific evidence in the record showing that the St. Louis and Chicago Railway Company ever took title to any property *south* of the line of the Indianapolis and St. Louis R. R.'s line, or that the Litchfield and St. Louis Company ever made any conveyance or transfer of property to the St. Louis and Chicago Company. But it is alleged in the petition of the American Loan and Trust Company *(Record,* p. 41*)* that the property upon which complainants were awarded a lien is embraced under the mortgage made to it by the St. Louis and Chicago Company, and that statement is in no way denied; the necessary inference, therefore, is that the property of the Litchfield and St. Louis Railway Company has become subject to the American Loan and Trust Company's mortgage. Wing testified (p. 224) that the St. Louis and Chicago R. R. Co. was *running* the road south of Litchfield.

II. With respect to all property acquired by the Empire Construction Company south of a point on the line of the Indianapolis and St. Louis Railroad Co.'s line, the proofs are in no wise materially different from those affecting the line north of the point aforesaid, except that there is no proof of the instrument of transfer from the Empire Construction Company to Cooley & Co. and that from Cooley & Co. to the Litchfield and St. Louis Railway Company. The papers are not given in the record (see *Record,* pp. 125, 129).

The answers of the defendant railway companies

(one of which was adopted by the American Loan and Trust Company as its own) deny that either the St. Louis and Chicago Railway Company or the Litchfield and St. Louis Railway Company received or took possession of any property of the Chicago, St. Louis and Springfield Co., and deny that any property covered by the old mortgage is owned by the new companies *(Record*, pp. 22, 23, 26, 27, 30, 31, 77*)*.

The complainants were therefore bound to establish by competent proof that the track or roadbed of the Litchfield and St. Louis Railway was subject to the lien of their mortgage.

They attempted to do this by parol proof of the weakest description.

BEACH testified that the Empire Construction Company did some work south of Litchfield, grading and bridging *(Record*, p. 130*)*, but that he had nothing to do with the Litchfield and St. Louis (p. 134); that the "old Board of Directors never turned over the property" *(Id.)*; that the construction company never turned over the work to the railroad company (p. 138); and although he said the track of the Litchfield and St. Louis was laid on the identical roadbed of the C., S. & St. L. road (p. 136), it appeared that he did not *know* of any variation (p. 137); that there might have been *(Id.)*, and that there actually were, changes (p. 139).

SOUTHWORTH *understood* the road to be the same; casually noticed it; *thought* they used the old grade *(Record*, p. 150*)*.

JOHNSON, when asked to testify to the identity of the lines, said: "*I wouldn't like to testify to that until I had seen it more definitely than as a man riding along a railroad, after night (Record*, p. 213*)*.

OLMSTED thought the lines were in "close proximity" *(Record*, p. 191*)*.

Against these conjectures, guesses and observations by men examining the line after dark while riding on a neighboring railway, WING testified positively *(Rec-*

ord, pp. 223–225) that the line of the Litchfield and St. Louis Company ran over property in which neither the Construction Company nor the C. S. & St. L. Company ever had any interest, it having been purchased by him individually, except in one case of condemnation and in the case of a public street.

The record does not show that the Chicago, Springfield and St. Louis Company ever had possession of any line of railway.

II. The evidence shows, as in the case of the line north of Litchfield, that the Chicago, Springfield and St. Louis R. R. Co. never had any title or possession, and, hence, its mortgage could give no lien, especially as against subsequent mortgagees taking under subsequent owners, and not chargeable with notice, actual or constructive, of any pre-existing lien.

Fifth. THE DECREE IS ERRONEOUS, IN THAT IT DOES NOT DECLARE THE FACT, NATURE OR EXTENT OF THE DEFAULT CONSTITUTING THE BREACH OF THE CONDITION OF THE MORTGAGE, AND IN THAT IT ADJUDGES THE COMPLAINANTS TO BE ENTITLED TO PAYMENT IN EXCESS OF THE AMOUNT DUE.

I. The decree is "that the said defendant The Chicago, Springfield and St. Louis Railroad Company, or some one in its behalf, pay to the complainants, within ninety days from this date, the sum of $22,976.59, being the said sum of twenty thousand dollars for which the said bonds were bid off by complainants, and six per cent. interest thereon;" and, in default, that the property be sold.

It does not adjudge that there has ever been any default in payment of any installment of interest or of any principal.

It is, therefore, erroneous.

Chicago and Vincennes R. R. vs. Fosdick, 106 U. S., 47, pp. 68, 70, and cases cited.

II. The complainants were not entitled to any decree for or on account of principal; at the most, they could have a decree only for interest (see Fifth Point, Subdivision V. *ante*).

Sixth. THE DECREE SHOULD BE REVERSED, AND THE BILL DISMISSED.

ADRIAN H. JOLINE,
Of Counsel for Dallas B. Pratt, Trustee, Mercantile Trust Company and Central Trust Co. of New York.

149 U.S. 327

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IN THE

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OCTOBER TERM, 1892.

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247.

DALLAS B. PRATT,
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Appellees.
248.

Supplemental Brief for Complainant-Appellants.

FREDERICK N. JUDSON
AND CHARLES S. TAUSSIG,
WITH WHOM IS SAMUEL P WHEELER,
For Complainant-Appellants.

Nixon-Jones Printing Co., 215 Pine St., St. Louis.

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SUPPLEMENTAL BRIEF FOR COMPLAINANT-APPELLANTS IN NO. 247 AND FOR APPELLEES IN 248.

I.

The brief of opposing counsel purports to be filed on behalf of the *Central Trust Co.* of New York as one of the

appellees in No. 247. It will be remembered that the Central Trust Co. was the trustee in complainants' mortgage and also in the mortgage stated in the bill to have been executed by the Litchfield & St. Louis Ry. Co., on the railroad south of Litchfield to secure $200,000.00 of bonds. It was stated in our brief, page 5, that it was admitted at the hearing in the court below that this mortgage was released and canceled of record subsequent to the filing of the bill. Counsel state, in his brief, that this fact does not appear of record, and there are several allusions in his brief (page 9, 19 and 26) to the Central Trust Co. as a substantial party contestant to this appeal.

It is proper to state upon this point that counsel who files the opposing brief did not appear in the case in the court below. When the statement was made in our brief, page 5, it was not supposed that it would be questioned. The implication conveyed in the allusions referred to that the Central Trust Co. mortgage on the line south of Litchfield executed by the Litchfield & St. Louis Ry. Co. still subsists as a lien created prior to the filing of the bill warrants our calling the attention of the court to what is in the record in relation to that company and its mortgage.

The answer of the Central Trust Co. (Rec., p. 12) admitted the execution of both the complainants' mortgage and that of the Litchfield & St. Louis Ry. Co., and the issue of 50 bonds under the former as in the bill alleged, and alleged that *it had resigned* as trustee in each mortgage for the reason, that "it had been advised by counsel that "owing to its trust relation under each mortgage *it ought* "*not to take any part on behalf of one or the other* in any "controversy between the bondholders, and that com- "plainants could be fully protected by suit in their own "names."

There is nothing in the record to show that any appearance or appointment of a successor to the Central Trust Com-

pany as trustee in this Litchfield & St. Louis Ry. mortgage was made. It is reasonable to assume that if the mortgage had continued in force such appearance and appointment would have been made. It also appears of record that the mortgage of the American Loan & Trust Company, of which Mr. Pratt is the successor, was executed *after* the filing of the bill and according to their petition to be made a party, constituted a lien upon the property south of Litchfield, which was the *same property* covered by the Litchfield & St. Louis mortgage to the Central Trust Company. There is no reference in the decree to the Litchfield & St. Louis mortgage to the Central Trust Company but there is an explicit statement (Rec., p. 243) in the *verified* motion for a rehearing that its release and cancellation had been admitted in open court. As *no appeal* was taken from the decree by either the Central Trust Company or any successor in trust, even if the mortgage was not canceled, the company as appellee has no standing in this court to question the decree or to inquire whether the findings of the decree adverse to it, are sustained by the evidence.

Chittenden *v.* Brewster, 2 Wallace, 191.

II.

ALLEGED OMISSIONS IN THE RECORD.

Counsel calls attention to fact that the mortgage sued on, which the record shows was duly offered in evidence, is not printed *in extenso* in this record.

But if there was anything in this point the only cross-appellant, Pratt, the successor of the American Loan & Trust Co., cannot raise it, because it *adopted and accepted* the answer

of the *mortgagor* the Chicago, Springfield & St. Louis R. R. Co. (Rec., p. 46), and that answer in express terms *admitted* the execution of the mortgage as alleged in the bill (Rec. 29).

As to the other defendants, *appellees* in this court, it is sufficient to say that the *decree* expressly finds the execution, delivery and recording of the mortgage — gives full description (Rec., p. 236, *et seq.*).

These appellees clearly have no standing in this court to question this finding.

Chittenden *v.* Brewster, 2 *supra.*

But aside from the foregoing the mortgage is set out *in extenso* in the record, *i. e.*, in the record proceedings of the mortgagor (Rec., p. 91–103).

Under these circumstances it seems hypercritical to insist that the mortgage after being formally put in evidence, should be a second time printed *in extenso.*

So as to the omission of the *Cooley* conveyances to the Litchfield & St. Louis R. R. Co., *i. e.*, as to the property south of Litchfield.

So far as the recitals of these Cooley deeds are relied to prove express notice to the mortgagees of the new companies, they are not needed *south* of Litchfield as the mortgage to the American Loan and Trust Co., was executed *after* the filing of complainants' bill.

The identity of the mortgaged property *south* of Litchfield is abundantly proved otherwise.

See page 39 of our brief.

The decree expressly finds the material features of these conveyances south of Litchfield (Rec., p. 239).

III.

The suggestion of the defense of *laches* is not warranted by anything in the pleadings and for aught that appears in the record, other than in complainants' motion for a rehearing, is made for the first time in this court.

In Commissioners *v.* R. R. Co., 18 Fed. Rep. 209, there was a delay of *thirteen* years and the defense was held good under the State statute of limitations. In Sullivan *v.* R. R. Co., 94 U. S. 806, cited by counsel, complainants were silent for *seventeen* years. In the case at bar the bill of foreclosure was filed in a little over a month after complainants had acquired title in strict conformity with their contract. It is said, page 29, that the denial of a *motion for a rehearing* is not reviewable in this court. That is true in so far as the motion appealed to the *discretion* of the court. That was not the ground of the motion. It was complainant's assertion of their legal right to be heard and to have a day in court, and the denial of such an application was the denial of a substantial right in the administration of justice. If it was material as counsel now argue that complainants waited for several months in the vain hope, that some of the parties interested in this road would relieve them of the necessity of unraveling the complications by costly litigation; which delay it devolved upon them to explain, they certainly had their right to a day in court to make such explanation, and to show the actual facts, which they offered to do.

The suggestion that they did not apply quickly enough, page 27, is absurd. Certainly counsel could not assume that the court would try and decide the case upon issues not made by the pleadings until such decision was actually made, and immediately thereupon the motion was filed as the record shows, more than two months prior to the entry of the final decree.

IV.

It is said, page 22, in counsel's brief, that the Chicago, Springfield & St. Louis R. R. Co. in a suit by the Empire Construction Co. upon these bonds, had a good defense thereto based upon the defaults of the Construction Co. and its other failures to perform its contracts.

This proposition, which seems to be the only attempted defense of the decree in its scaling of complainants' recovery, is utterly untenable for three reasons, each of them conclusive:

1. No such defense is set up in the pleadings in any form.

2. The point so far as the record discloses is made *for the first* time in this court.

3. It is not only not supported by any proofs, but is directly controverted by the answer of the mortgagor, the Chicago, Springfield & St. Louis R. R. Co., page 30. This may be found by turning back to page 10 of counsel's brief: "They (the R. R. Co.) say that the Empire Con-"struction Co. stopped its construction work for *good* "*reasons* and *by mutual consent.*"

So far as the record discloses there is no reason even suggested why the Empire Construction Co. could not itself have enforced the collection of these bonds for the full amount against the property of the mortgagor. It is admitted that the property acquired for the mortgagor, *i. e.*, the consideration of the bonds, far exceeded the amount of the bonds. The irregular transactions complained of did not occur until the spring of 1885, long after the bonds had been conveyed by the Empire Construction Co.

This is clearly illustrated by the proceedings of the board of directors of the mortgagor company held on December 20, 1886, Rec., p. 122, to which counsel himself calls attention, page 18. At this meeting, a resolution was adopted authorizing the president "to employ counsel to "take proceedings to *protect the holders of the $50,000.00* "*of bonds issued by this company* and also the creditors "and stockholders of the company."

This meeting to which counsel thus invites attention was held five days after the complainants had bought in the bonds, and a little over a month before the filing of the bill.

V.

The suggestion that under the usual prayer "for an ac- "count of all the bonds and coupons," the court could try an issue as to complainant's right of recovering the face value of the securities held by him not made by any pleading in the case, is untenable. Complainant appeals, *because* the court below refused to take an account of the bonds and coupons and for that very reason the decree is erroneous.

That complainants were the holders of all the bonds and coupons was *admitted by all the defendants* (Rec., p. 175) and found by the court in its decree.

VI.

It is further contended that the decree is erroneous in that the court did not decree the amount due by the mortgagor under the conditions thereof. In this we agree with counsel. As a matter of course the decree did not determine the amount due upon the bonds for either principal or interest, for the obvious reason that it ignored the bonds

and mortgage, the instruments sued upon altogether, and undertook to award another and different recovery outside of the instruments sued upon and outside of the pleadings. In such a decree there could of course be no conformity to the established rules of equity regulating decrees in mortgage foreclosures. How would the court determine the amount of interest in a decree *nisi?* and from what time would it be computed?

It is clear therefore in the very point made by counsel that the decree cannot stand, and the only question before the court is as to the terms of the direction in the reversal.

Whether under the facts in the case at bar, only fifty bonds having been issued and the concurrence of 100 being required to declare the principal due on default in interest, any formal declaration of the exercise of such option was required of these complainants is really immaterial. Such determination is required solely for the purpose of affording the mortgagor an opportunity by decree *nisi* to pay the precise amount in default and thus prevent a sale. If sale is made, the entire property is sold and the principal as well as interest paid by the proceeds. If in the present case the mortgagor or any party claiming under him desires the fixing by decree *nisi* of the amount of *interest* due upon these bonds, with the privilege of preventing the sale by the payment of such amount leaving the principal bonds secured by the mortgaged estate, complainants have no objection thereto.

FREDERICK N. JUDSON,
AND CHARLES S. TAUSSIG,
WITH WHOM IS SAMUEL P. WHEELER,
For Complainant-Appellants.